

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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1	UNITED STATES OF AMERICA,	:	Case No. 1:18-cr-0043
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4	Plaintiff,	:	
5		:	
6	- v -	:	Closing Arguments
7		:	
8	YANJUN XU, also known as XU	:	Wednesday, November 3, 2021
9	YANJUN, also known as QU HUI,	:	9:30 a.m.
10	also known as ZHANG HUI,	:	
11		:	Cincinnati, Ohio
12	Defendant.	:	

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EXCERPT OF TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TIMOTHY S. BLACK, DISTRICT JUDGE

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EXCERPT OF PROCEEDINGS

(In open court at 11:30 a.m.)

* * *

MR. MANGAN: Good morning, ladies and gentlemen.

Before I begin, I want to thank you first and foremost for your time, your attention, and your service in this matter. It's very much appreciated by everyone involved.

Now, I'm not going to pretend that this is a normal case. It's not. At its heart, you are asked to decide whether this man, Xu Yanjun, engaged in a conspiracy to steal trade secrets from aviation companies across the world, or whether he attempted to steal those trade secrets from GE Aviation in addition.

But it's much more than that, because this case also involves a much larger concerted effort to engage in industrial espionage, economic espionage, on behalf of a foreign country; namely, the People's Republic of China.

And the defendant in this case, as you know, is not someone who is loosely connected with some Chinese entity. He is, in fact, an intelligence officer, a spy, with China's Ministry of State Security, with the sole mission of trying to acquire whatever trade secrets he can from aviation firms by whatever means on behalf of the state.

And he used many different means and methods, and we will talk about those as we go through this. And he also had many

1 conspirators, coconspirators, people at MSS that you heard
2 about already like his associates, Chen Feng, Xu Hang; his
3 boss, Zha Rong; and his associates at AVIC that he worked
4 with, the technical experts that helped define his
5 requirements; friends like his card playing friends at NUAA;
6 his university ally, Chen Feng, as well as insiders that he
7 had planted in aviation companies, like Tian Xi and Gu Geng at
8 Safran.

9 Now, the government bears the burden of proof in this
10 case, and we gladly take on that burden because the evidence
11 shows beyond a reasonable doubt that the defendant is guilty
12 of all the crimes charged in this case.

13 Now I'd like to talk a little bit about these crimes and
14 walk through the four charges that you've just been instructed
15 on by the Court.

16 First and foremost, we'll talk about Counts 1 and 2, the
17 conspiracies towards the aviation companies. Bear in mind,
18 for Counts 1 and 2, the time period that we're talking about
19 is from 2013 through April 1, 2018.

20 Count 1 is for the conspiracy to commit economic
21 espionage, and Count 2 is the conspiracy for the theft of
22 trade secrets, okay.

23 These involved all of the activities that we've discussed
24 in this case, all of the things related to Safran, related to
25 these exchanges, related to the overall conduct that he

1 engaged in during that time period. It also includes the GE
2 incident, all right. That's Counts 1 and 2. Those are the
3 conspiracy counts.

4 Again, as you heard in the instructions, it's simply an
5 agreement, an understanding between him and others, just one
6 other person to engage in these crimes, and then an overt act
7 in furtherance of the crimes.

8 The main difference between the economic espionage and
9 the trade secret portions, as you saw in the instructions, was
10 that for the economic espionage charge, it talks about that
11 this was to benefit a foreign government or a foreign
12 instrumentality or a foreign agent.

13 Here you have all of those things because he was working
14 on behalf of the MSS, along with other entities like NUAA, and
15 certainly the government for China itself.

16 In contrast, the crime related to the theft of trade
17 secrets involves an intent to injure the owner of the trade
18 secrets, to take it from them to harm that owner of the trade
19 secrets and benefit someone else. As you look through those
20 instructions, that's the fundamental distinction there.

21 When we turn to Counts 3 and 4, there we are talking
22 specifically about the aviation, GE Aviation incident that
23 occurred between 2017 and April 1, 2018, that you heard so
24 much about.

25 These are both attempt charges. Again, the GE incident

1 is included in Counts 1 and 2. But with respect to Counts 3
2 and 4, these are specific attempt charges related to the
3 conduct towards GE Aviation in that time period.

4 Again, the distinction between the economic espionage and
5 trade secrets has to do with was it to benefit a foreign
6 country, did it also have the intent to injure the trade
7 secret owner, okay?

8 Importantly, as you heard in the instructions, there's no
9 requirement that it requires proof that any trade secret was
10 lost. Again, he's charged with conspiring to commit these
11 crimes, and he's charged with attempting to commit these
12 crimes. It doesn't require proof that he actually acquired
13 any specific, one specific trade secret. It also doesn't
14 matter if the information that he was targeting --

15 THE COURT: Excuse me. Excuse me. I'm sorry. The
16 interpreter has a hand up. Slow down?

17 THE INTERPRETER: The interpreter is asking to slow
18 down.

19 THE COURT: I think I heard slow down.

20 MR. MANGAN: I did. I will.

21 THE COURT: Very well.

22 MR. MANGAN: What I also wanted to say is that it
23 doesn't matter if the targeted information actually was a
24 trade secret or not. What's important is what he believed and
25 what he intended. The question is did he target information

1 that he believed was a trade secret, and the answer to that
2 question is undoubtedly yes.

3 Now, before I turn to the mountain of evidence in this
4 case, one thing I want to highlight for all of you. The
5 evidence in this case, nearly all of it, came from his own
6 words. There's hardly another case like this. The case came
7 directly from his own writings, his own text messages, his
8 recordings, his pictures, his cloud, his calendar and diary.
9 These are all his own words.

10 You don't have to resolve any kind of he said/she said
11 dispute. These are his own statements, his admissions. And
12 we all know, as a matter of human nature, that it's not
13 uncommon for people to say things, often incriminating things,
14 when they don't think anybody's listening or they don't think
15 these statements will ever reach the light of day.

16 Well, these statements by the defendant did reach the
17 light of day in this courtroom. And what you see in there is
18 that it shines a light on what his deeds were, and it gives
19 you a clear window -- his own statements give you a clear
20 window into his intent.

21 Now, let's start with a fundamental question. Who is
22 this defendant? We went through a lot of information at the
23 beginning of the trial to piece together where the information
24 came from so that you would be confident in the sources of the
25 evidence and how they are all connected and tied to each

1 other, especially when we're dealing with his names and his
2 aliases and the various accounts that he used.

3 We explained to you that there were four different phones
4 recovered in Belgium, including the Apple 5s, which we've
5 talked about numerous times. This was the phone that was
6 backed up on the jastquhui@icloud, and it contained so much of
7 the evidence you heard.

8 In addition, there was the iCloud backup of the phone and
9 the iCloud account itself. All of these had chats, text
10 messages, the calendar, the photos, the recordings. And then
11 we also showed you a few emails from these two different email
12 accounts, the JAST XYJ, which stands for JAST Xu Yanjun, and
13 then the JAST Qu Hui Gmail accounts, okay?

14 We wanted to give you that belt and suspenders approach
15 so that you can understand how all of these are tied together
16 and that you had that confidence in this evidence.

17 Let's start with what was on him when he was arrested.
18 First of all, there was certainly the passport, and that
19 included the Schengen visas with his true identity on it. It
20 showed how he went to Europe in 2017, and then again got a
21 visa in 2018.

22 He also was found with that passport and the credit card,
23 all in his true name. He was also found with his Chinese
24 national ID card. It contains his date of birth, his national
25 ID number, his true address back at home. These were all

1 found on him and identifies what his true identity is and who
2 he is.

3 Now, when we start looking at the electronic evidence, we
4 showed you the various different email accounts. If you look
5 at those top two accounts, two email addresses. The first one
6 set up in his own personal name, Xu Yanjun. The second one
7 set up in his alias, Qu Hui.

8 Both were set up on the exact same day, five minutes
9 apart, from the same IP address. He used the same recovery
10 email and the same phone number. And, lo and behold, it's the
11 same phone number that's on the phone that was on him in
12 Belgium, and it's the same phone number that's on the business
13 card that he gave to the GE employee in China. Same phone
14 number, the 2316 number.

15 If you want more confirmation that Qu Hui is the
16 defendant, that it's his alias, look at the last account. He
17 sets it up in the name of Qu Hui, Qu Hui 11, and the recovery
18 email is his true name and the year of his birth, Xu Yanjun,
19 1980.

20 As we go to the cloud accounts for those, you see, once
21 again, the JAST XYJ email, and that again is tied to the same
22 phone number. This is the cloud account associated with that
23 email.

24 When we turn to the JAST Qu Hui cloud account, again, it
25 describes the 5s phone that was actually recovered in Belgium.

1 It shows you on here, you see once again the Xu Yanjun 1980
2 email account he had used previously to set up a different
3 account. Here it is tied to this cloud account.

4 When you go to the other subscriber information, it shows
5 you the actual IMEI number for that 5s phone that was being
6 backed up on the cloud, and that's where so much of this
7 evidence came from.

8 It was for JAST Qu Hui's Gmail in the cloud account. The
9 phone number matched. The IMEI number matched. On the
10 right-hand side, you see the actual back of the phone that was
11 recovered in Belgium so that you have confidence this is the
12 same guy using his alias and these are his devices.

13 As we go forward here, we wanted to show you a lot of the
14 things that were found in his cloud account to further help
15 you understand the attribution. So if you weren't convinced
16 already that these are his numbers, these are his accounts,
17 this is why it's tied to him, look at the content of what we
18 found.

19 You have in there in his true name the photo of his own
20 national ID card that was found on him. You have pay stubs
21 that were in there that say that he worked for the Sixth
22 Division and had a law enforcement piece. You have a picture
23 of a bank withdrawal form where it identifies him as working
24 for the state security department, and it gives the same
25 national ID number, all right, and his true name.

1 You even have his NUAA card, which has, again, his true
2 Chinese national ID number, similar to our Social Security
3 number.

4 Other items that were found in there, in his cloud
5 account to help you understand this is really him, this is
6 really his stuff, here's his medical card that was found in
7 there. And then on the right-hand side was his MSS vacation
8 form that he sent to his wife. And in there, it explains he's
9 deputy division director, and he has his boss listed at the
10 bottom, Chen Li, who we also discussed during the trial, one
11 of the MSS supervisors.

12 Now, this is all to make clear how these tie together.
13 But who is he? Well, fortunately, he also took a picture of
14 his resumé, his Communist party application form, which sets
15 forth his entire history with the party and with the MSS. His
16 current post at the time that this was taken, sometime in that
17 2016 time period, was a deputy division director at the Sixth
18 Bureau for the Jiangsu Province Ministry of State Security.

19 And in the calendar part of it, it sets forth all of his
20 experience, roughly 15 years, developing and being promoted
21 within the MSS as one of their intelligence officers.

22 By the way, he talked about these promotions in his
23 calendar too, and there's a lot in the calendar, as you saw.
24 It's more or less his diary. He talked about these promotions
25 and his ups and downs with the MSS.

1 So you don't have to take our word for it. Look at the
2 evidence. It's right there in black and white, in his own
3 accounts, in his own words.

4 So let's turn to the messages. We went through these in
5 Exhibits 32 and 33, if you want to look through them, text
6 messages and WeChats from the defendant time and time again
7 identifying himself, identifying his email accounts,
8 confirming who he is and where he works.

9 Here again, "This is Xu Yanjun of the Provincial State
10 Security Office and the unit of recruiting is the MSS."
11 Message after message we went through.

12 Here are two more. It says where he works, it says his
13 true name; and, again, this is when he's talking to the
14 insiders, when he wants to let them know he works for the MSS,
15 because he's working with them on these operations.

16 Here again, more messages where he is not at all shy
17 about who he is and that he works for the MSS.

18 Here's one more message, again, explaining that he works
19 for the JSSD, which was that sub-department for the MSS.
20 Remember the MSS is the large organization. JSSD was the
21 sub-organization that he worked for for the Jiangsu Province.

22 Then we get into the WeChats, and it's even more
23 revealing when he talks about being in intelligence and that
24 he works for the Sixth Bureau. It's already in the resumé,
25 but this is just more and more evidence piling up, identifying

1 who he is and what he does.

2 In this chat with Vivian, he talks about his involvement
3 in intelligence assessment for the ministry, and he explains
4 the large investment that they have.

5 Then there's this question from her, "Does your division
6 mostly deal with overseas?" And his answer was, "Right.
7 Science and technology."

8 If you'll remember back at the very first witness, it was
9 Dr. Mulvenon, who explained to you what the MSS was, what
10 their purpose was. He talked about the various bureaus, and
11 he testified he was aware that the Sixth Bureau did science
12 and technology.

13 Here it is, an individual who is actually a member of the
14 Sixth Bureau, confirming in his own words, in his own chats
15 back in 2016, yep, that's what we do. I do science and
16 technology.

17 If you remember, there was a recording of the defendant
18 with a tutor that was found on his cloud. And when he's
19 talking with the tutor, they get into things about all the
20 secrets and what they can see as far as surveilling the
21 internet. A lot of things were discussed in there, and we
22 read those to you.

23 But as you'll see, one of those statements in here is
24 that he focused on aviation. Now, you also saw that from all
25 the evidence with respect to who he recruited and who he

1 contacted, it generally was people from Boeing, GE Aviation,
2 other aviation firms like Honeywell, and so on. But to
3 further confirm it, here he is saying it, "I focus on
4 aviation," okay? It's right there in black and white.

5 Now before we move on, I want to say one word about
6 Nanjing Luote. You may forget the name of this company. It
7 came up a little bit. This was the entity that he used on his
8 visa applications to France. It only comes up in those two
9 circumstances, when he went to France in 2017 and when he went
10 back in 2018 to meet the GE employee. And in those two
11 circumstances, he told the French authorities his employer was
12 this Nanjing Luote Technology.

13 There's nothing else in the cloud, as you heard in the
14 testimony from Agent Hull. There were no other messages,
15 nothing that indicated he worked for Nanjing Luote; no
16 calendar entries, no pay stubs, no identification card.
17 Nothing. No discussions with other Nanjing Luote employees.

18 All you have is when he traveled these two times, he told
19 the French authorities that that's where he worked, and then
20 they made up documents like the one on the right, saying
21 that's where he had worked for many years.

22 But you know now, from seeing his resumé and seeing
23 everything else, that he had been working for the MSS the
24 whole time, and this is a lie. It's a lie to the French
25 government. It's what he does.

1 You also saw the precautions document. If you recall,
2 Mr. Olson testified about that as well. Sometimes, when they
3 have a cover and they travel overseas, you need to study what
4 that cover is so that everybody knows how to answer questions.
5 And that sort of cheat-sheet precautions document was found in
6 the cloud for his travel. And in there, it said if you need
7 to contact anybody, you contact Chai Mung, one of his MSS
8 colleagues.

9 And then during those trips, both trips, they would use
10 codes when they chatted with each other, calling each other
11 Tom, or Jerry, or Sam, okay, further proof that they are using
12 their espionage trade craft when they would engage in these
13 various excursions where they went overseas, because those
14 were very risky for them.

15 But, again, all of the evidence you see that we presented
16 here proves that he was an MSS officer. That was his primary
17 function. That was his job. Everything else is an alias, or
18 a cover, or a front.

19 Let's talk about the aliases, mostly the Qu Hui one that
20 you see there. He used these aliases. This is part of the
21 deception that goes with his job title, that goes with his job
22 duties.

23 Take that into consideration when you consider his
24 intent, okay. He is hiding his MSS affiliation when he deals
25 with outsiders because he doesn't want them to know that the

1 MSS is behind these exchanges, that they are behind these
2 operations.

3 Look at what he's hiding when you consider his intent.
4 To do his job, this was the card obviously that he handed to
5 the GE employee. It was part of this alias that he used
6 fairly consistently with a number of these exchanges,
7 especially when he dealt with outsiders, people that weren't,
8 you know, either at AVIC, or at NUAA, or at MSS, okay?

9 Here it's very clear he sends a message to someone,
10 saying, "Teacher Zhang, my working identity is Qu Hui, deputy
11 secretary general of the Jiangsu Province Foreign Science and
12 Technology Association. Thanks." And then he signs it with
13 his true name. He calls it his working identity.

14 And remember, you heard from Mr. Mulvenon, Mr. Olson how
15 the MSS does use science and technology associations as
16 covers, as fronts for some of their operations. It happened
17 throughout this case, you saw in the evidence.

18 But look at this right here. Remember back in the
19 opening statements -- and I know our opening statements aren't
20 evidence, but the defense mentioned to you that he works for
21 Nanjing Luote, and maybe sometimes for the MSS, and who knows
22 who Qu Hui was.

23 They made that statement. "Who knows who Qu Hui is?"
24 You know who he is. He just told you. He tells you over and
25 over again in the evidence. He's Xu Yanjun. This is his

1 working identity. This is my alias. This is the lie I'm
2 using. Let's get it straight so that you call me by the right
3 name when we're trying to dupe these foreigners.

4 So when they talk about who knows who Qu Hui is, is that
5 what you saw in the evidence? Because the evidence was very
6 clear. It's his alias. It is this defendant.

7 Mr. Zheng, from GE Aviation, went to meet Qu Hui, got the
8 business card. He stood here in the courtroom and pointed at
9 him. "That's him. I met him. That was the guy who said he
10 was Qu Hui," who you know as Xu Yanjun.

11 Here you have one of the examples, one of many examples
12 in the evidence where he's introducing himself to the
13 outsiders as being part of JAST. This is part of the
14 deception. It's part of the luring and the recruiting. The
15 whole idea is to bring people back under these false
16 pretenses, lull them into some sense of comfort that this is
17 normal, this is aboveboard, there's nothing underhanded here.
18 You certainly can't tell them you work for the MSS.

19 It's part of the scheme. It's how they try to get the
20 technology. This is part of the con. That's what it is.
21 It's a con.

22 Let's look at a job posting that he does over at -- he
23 reaches out to one of the professors and wants to do a job
24 posting for JAST, and he tells the professor, Hey, don't tell
25 them -- don't reveal our security agency background when you

1 notify the students. Just put the posting under the JAST
2 name.

3 So he's acknowledging we used it as a front. Don't tell
4 the students. But in the contact portion, when the students
5 want to apply, this is who they contact; same phone number,
6 same email address, same defendant who is sitting here today.

7 Now, there is one other alias. This was admitted in the
8 evidence, and I know we read a lot to you. We read a lot.
9 And I appreciate your patience. We didn't actually read these
10 exhibits. This was Exhibits 94 to 98. You're welcome. We
11 didn't read all of those to you. You may think we read
12 everything. It felt that way, but this was something we
13 didn't cover.

14 I'm going to just comment on it briefly, but you can go
15 take a look at 94 through 98. There was another individual at
16 Boeing that was recruited over for exchanges, an engineer
17 named Linda Li. And with Linda Li, you'll see in the messages
18 with her that the defendant reached out to her under a
19 different alias called Zhang Hui or Zhang Hui.

20 Even for this one, he set up a LinkedIn profile under
21 this name. If you'll look at the email address that set it
22 up, it's jastxyj@gmail.com. And when she came over for the
23 exchanges, he had to reach out to his coconspirators and let
24 them know the alias he was using.

25 So here again, similar to what you saw in other

1 instances, he's telling the dean for this exchange, Hey, I'm
2 Zhang Hui, deputy director over at this science and technology
3 association, so everybody can get on the same page. Then he
4 sends the same thing to two more people. Hey, here's the
5 identification I'm using.

6 Remember this is coming from the defendant on his own
7 communication platforms on this phone that we've already
8 talked about.

9 This kind of deception is second nature for him. It was
10 part of the job. It comes with being an officer in the MSS,
11 and it comes with trying to lure these people over to get
12 their technology. Again, understanding what he's hiding helps
13 you understand his intent.

14 Let's turn to the exchanges themselves. We talked about
15 those a lot. The aliases, these fronts and covers were part
16 of bringing the folks over. These, again, were the opening
17 steps to bringing folks over and trying to soften them up,
18 recruit them, and find out how they might be best used by the
19 MSS in order to acquire the technology they want.

20 The true purpose was to lure them and obtain trade
21 secrets. We looked at the recruitment cycle. First, there
22 was a spotting. As you heard, they would reach out,
23 oftentimes through LinkedIn, as a way to identify the person
24 in the right company with the right expertise. That certainly
25 happened in the GE scenario.

1 Oftentimes, they would use a person as a front person to
2 make the first invitation, like they did with Chen Feng and
3 the GE Aviation employee -- that's part of that spotting
4 process -- and then inviting them over.

5 Then when they bring them over, they do the wining and
6 dining. They take them out for a couple meals. They get to
7 know who they are. Maybe they do a presentation to students.
8 This is all part of the assessment phase.

9 As you heard, this is part of the recruitment cycle for
10 an espionage officer. They're assessing them. They're trying
11 to learn as much as they can, find out what they know and how
12 they can help the MSS.

13 They pay them cash. They'll pay for sightseeing.
14 They'll take them around, all right, all under false names,
15 false covers, so that the person doesn't know. And, by the
16 way, maybe they brought their work computer. But we'll come
17 back to that.

18 As you saw, he did this many times with Arthur Gao. He
19 did it with the individual at Boeing who did the IT, Sun Li,
20 Linda Li. It goes on and on.

21 Now, one of the examples we showed you was this
22 individual named Bin Liang, and he was a person who had worked
23 for one of the aviation companies. Again, the alias was used.

24 He brought them over. He offered to help the parents of
25 the individual with the demolition issue in China, which,

1 again, was part of how they tried to leverage things in China
2 to help get some cooperation, and brought the person around
3 for sightseeing and presentations.

4 And, again, as you saw at the bottom there, once again,
5 "The guest doesn't know our identity. I approached him in the
6 name of Qu Hui," okay? So we see it over and over again
7 between them.

8 Ask yourself -- and we do rely on your common sense.
9 It's in the instructions. Apply your common sense. Ask
10 yourselves, why are they using this deception? If you're
11 simply trying to get public information, if you are on the
12 up-and-up, if you have legitimate reasons for what you're
13 doing, you don't do this stuff.

14 It's all part of the developing of sources. What are the
15 options once they get them? Well, we'll talk about that a
16 little bit more here with Arthur Gao; but, obviously, once
17 they bring them over and they get them developed, there are
18 options. They can keep asking them back. They can try to get
19 more information. They can even break into their hotel room
20 and take their computers; a lot of options at this point.

21 Now, you heard about Arthur Gao. He was originally
22 recruited by Zha Rong, who was using an NUAA alias at the
23 time. They brought him back in 2016, and that's when he was
24 handed from Zha Rong over to the defendant, Xu Yanjun.

25 They met at that point. No presentation. They just took

1 him sightseeing, paid for everything. And when he left, they
2 gave him \$5,000 in cash and said why don't you come on back.
3 All right. They were just planting the seeds, trying to make
4 sure they had started to get their hooks in him and slowly get
5 him going.

6 But what really was interesting was when he came back in
7 2017. He gave a presentation, and the substance of the
8 presentation, it's in the transcript, but what was interesting
9 was that the whole meeting was recorded.

10 And when Arthur Gao left -- and he testified here, Nobody
11 asked me specifically for any trade secrets. Not that that's
12 the words they're going to use anyway, but what he didn't know
13 is what they were going to say about him after he left, and
14 what Xu was going to say about his overall process after he
15 left. That's what's really interesting in this.

16 As you look at this recording -- and he talked about how
17 he works with these experts when you bring them over. Again,
18 think of this in terms of the recruitment cycle.

19 As he went through these, he walked through -- he tells
20 you exactly what his process is. At the highest level, these
21 experts can participate in long-term design. But there's a
22 problem with this because of the time commitment. They can't
23 simply leave their jobs, and they may not want to leave their
24 jobs or the U.S. and come back to China and become an actual
25 developer for China.

1 So another option is to present specific problems or
2 programs to the person about the problems encountered and see
3 if they can help China fix some of those problems.

4 But the big one that he uses the most, probably, is
5 asking the experts -- and by "experts," he's talking about
6 people that work for aviation companies in the U.S. and in
7 Europe, all right. These are insiders in aviation companies
8 that they are luring back.

9 One of their main options, and something he says they did
10 frequently, was to try to get them to provide information
11 directly, okay? And he talks about the volume of information
12 is hard, and they have a lot of challenges with this; but,
13 most importantly, it's right here.

14 "As experts abroad, it's very difficult for them to
15 directly take materials, large batches of materials from
16 abroad, due to the fact that their company security is tight."
17 And he talks about the risk they bear before he gets cut off.

18 Look, he gives away his intent here, okay? There's no
19 statement here about we respect the security of these
20 companies. This is an obstacle for him. This is something he
21 wants to circumvent and get around, and he needs to try to
22 find people on the other side that will look at it the same
23 way.

24 Again, this is a problem. The way it's difficult for
25 them is because sometimes the security is tight for this

1 information. Remember the definition of trade secrets:

2 Information that a company has taken reasonable precautions to
3 keep secret and that they derive some economic benefit from
4 that being kept secret.

5 That's really all we're talking about with trade secrets.
6 It's not magical. And here, when he talks about it in the
7 context that he never thought was going to be played in an
8 American courtroom, here he is talking about it. "Large
9 batches of materials, it's hard to take because the company's
10 security is tight." He's not backing off from it. It's just
11 a problem they need to overcome. He still wants that
12 information. He still intends to get those trade secrets.

13 Now they do talk about Arthur Gao, how they can still use
14 him. And they mentioned even, well, maybe he can get
15 information because his company's bankrupt. They seem to
16 think that's sort of an opening for him. Mr. Gao didn't know
17 any of this, of course. He didn't know how he might be used
18 in the future; and, fortunately, he never made it back there
19 before this defendant was arrested.

20 They also talk about spotting, that he can contribute to
21 other things, like introduce other experts for us. So here's
22 some more talking about spotting. We saw it on the
23 recruitment cycle.

24 And Mr. Xu, the defendant, talks directly about how he
25 targets people. It's not simply the technology. If they tell

1 him, Hey, we need composite fan blade technology, he needs to
2 know the company. And we'll get to that. There's one
3 company. It's GE Aviation.

4 He wants to know the company, and then he can look,
5 whether it's LinkedIn or somewhere else, and start burrowing
6 down to the person with the right specialty, the right access,
7 and then that's who he looks for.

8 And he says it right here, all right? We're not asking
9 you to, you know, come up with this out of some other
10 circumstances. It's right here in his admissions. He's
11 trying to find the company, and then he tries to identify the
12 person.

13 He also goes on to talk at length about funding. And
14 what is made abundantly clear is that there are no limits
15 here, that there is abundant funding for this.

16 And the very last statement at the bottom is maybe the
17 most telling, "As for money, for our state, the funding for
18 the aviation field is not a problem," right?

19 So he has all these tools at his disposal. The main
20 goal, though, is to get trade secrets. This is not a
21 discussion you are having about trying to do open source,
22 public research on the internet, okay? This is what you're
23 talking about when you're talking about operations,
24 intelligence operations.

25 Again, he goes on and on, talking about the funding. He

1 even mentions if somebody can give him a serial number and he
2 can find the document, he's willing to spend the money to buy
3 it, okay?

4 And you saw with these exchanges there's plenty of cash
5 thrown around. With Arthur Gao, they gave him five grand in
6 2016 just to come back. When he came back, gave a
7 presentation, they gave him another pile of cash and paid for
8 his trip back.

9 They do talk about the state function, as I mentioned in
10 the economic espionage portion. There's certainly a part of
11 this where one of the elements is that they're doing these
12 crimes on behalf of or for the benefit of a state entity,
13 which would include MSS. But here, it's right here.

14 If you want to check the box on this element, go right to
15 this statement: "Talk about the truth. With that said, we
16 are serving the state." Period. End of story. That's what
17 he's doing. That's his job. That's his mission.

18 Now, one of the portions of the recording, he happens to
19 talk about originally looking for a fan blade. So I wanted to
20 point out the timing of this.

21 When we get to the GE function, the GE employee's invited
22 there and gives his initial presentation in June of 2017. A
23 few months later, we have Arthur Gao coming back for his round
24 two.

25 Then you get this recording, and he makes this comment.

1 And then shortly thereafter is when the FBI goes and
2 intervenes with the GE employee, and then they reach out.
3 Within seven, eight months, April 1st, the defendant is
4 arrested.

5 These overlap. That's the main point I wanted to get to,
6 that you understood that the timing of this recording showing
7 his intent is in the middle of and as the GE incidents are
8 going on. It's over the same time period.

9 He then goes on and talks some more about Mr. Gao, how
10 we've got some options for how we can use this guy, that he
11 seems willing. You know, Arthur Gao doesn't know what they
12 have in store for him, but they have a plan. The question is
13 what method they want to use for execution. You see that at
14 the bottom. They want to design something for him and make
15 use of what he knows.

16 And sure enough, in January of that year, it was around
17 the same time he's starting to make plans to meet with the
18 GE employee, they send a tasking to Arthur Gao, where they did
19 ask for information, more detailed information. So they are
20 continuing down that path of trying to develop him as a source
21 and extract information.

22 The other interesting thing after that meeting was this
23 particular phone call that he has with Chai Meng. And Chai
24 Meng is everywhere. We're going to talk about him a lot.
25 He's in Safran. He's in the GE case. He was with Arthur Gao.

1 He was in the picture. That's him, the tall guy on the left,
2 meeting with Arthur Gao and taking him sightseeing.

3 And after the meeting, you get the call from the
4 defendant saying, Hey, you used the wrong alias. It's hard
5 when you're lying. It's hard to keep them straight. These
6 things happen.

7 And right here, he goes through it and he explains, You
8 said you were with the foreign affairs office of NUAA.
9 Remember, that was the lie that Zha Rong had used for him and
10 Xu. But he wanted him to use the JAST alias, which, by the
11 way, Chai Meng's alias Cai, C-a-i, and Mr. Gao said, Yeah,
12 this was the guy, C-a-i, that's how they introduced him to me.
13 The tall guy was called the secretary.

14 That alias was on the JAST website, Cai Meng, right next
15 to his alias, Qu Hui, on the JAST website, until after he was
16 arrested, and then they pulled the alias down.

17 But it's interesting here. It definitely reveals very
18 clearly what they are doing. This is the inside stuff. One
19 spy talking to another, saying, Hey, you messed up. You used
20 the wrong alias when we were talking to the target. Let's
21 clean it up tomorrow.

22 One other thing before we move on here. You saw how
23 Mr. Xu talked with people at places like AVIC to help define
24 requirements, also evaluate the information that he was
25 collecting.

1 We introduced a number of those communications between
2 him and individuals at AVIC. I won't go through all of those,
3 but one of the parts of it that was interesting was their use
4 of codes. And you also saw their use of -- their discussions
5 regarding not just commercial aviation technology, but
6 military aviation technology.

7 The efforts of Mr. Xu and his coworkers at the MSS to
8 steal aviation technology extended into that realm, and they
9 certainly did have an impact on those interests. They used
10 codes in discussing military technology. You see in this
11 exchange where he passes along the various codes from his MSS
12 associate to one of the AVIC associates.

13 You recall he talked about seeing plans or getting plans
14 for the U.S. F-22 fighter aircraft. They also made a
15 reference to another aircraft. The U.S. aerial refueling
16 aircraft, the KC-135, which he talks about right here in one
17 of his messages to AVIC.

18 This reinforces what you heard is that the number one
19 goal for MSS and for his group was to get aviation technology,
20 and that certainly bled over into information of what might be
21 military technology, which certainly even more so is going to
22 be protected and guarded as trade secret.

23 I alluded to the issue with computer hacking, and we got
24 a lot to talk about there, so let's turn to it.

25 So with respect to computer hacking, these exchanges were

1 the beginning of the process to recruit sources. They would
2 bring the individuals over and, from that point, they have a
3 lot of different ways to use them.

4 If the person actually became an insider and became an
5 asset within a company like Safran, then they could use them
6 in even more aggressive ways.

7 The hacking of Safran is the crystal clear example of how
8 an intelligence operation like the one he operated could use a
9 HUMINT asset inside of a company to help with acquiring trade
10 secrets from an aviation company by planting malware on one of
11 the employee's networks.

12 The messages -- and there's a lot in here, and we'll go
13 through them all, but please go back and reread the summary of
14 the Safran intrusion in Exhibit 110. It walks through it from
15 beginning to end, where he talks with his insider.

16 Remember the Safran employee came here from France to
17 testify, and he explained that he went to Suzhou, which is the
18 area in China where they had their particular plant with their
19 subsidiary, and he met with -- he worked with Tian Xi, one of
20 the main managers at the plant. They worked side by side, and
21 he didn't know this guy was betraying him the whole time. And
22 the reason he was betraying him is because he was a working
23 inside asset for an MSS spy, Xu Yanjun.

24 They talked about when they're going to meet, when the
25 Frenchmen are arriving so that he can set up times to meet,

1 okay? They go on and on and talk about when they're going to
2 get together.

3 As you go on, he even talks about, Hey, if we can meet at
4 the restaurant, I'll pretend to bump into you at the
5 restaurant. That way, we don't have to meet elsewhere. And
6 they try to make those types of covert arrangements.

7 Now, eventually, they get to where he talks about where
8 they're staying, and he tells them the Crowne Plaza. If you
9 remember, Mr. Hascoet testified that when he would go there,
10 that's where they stayed. They stayed at the Crowne Plaza.

11 This is going through November, and they're having some
12 frustration. They didn't quite get where they wanted to be,
13 and he asked the question of Tian Xi, "Horse hasn't been
14 planted?"

15 Now, you heard the testimony from Adam James, the special
16 agent, about what a remote access Trojan was, and that this is
17 a term for that kind of malware, that kind of remote access
18 Trojan horse malware that can be planted on somebody's
19 computer. Again, they talk about how they haven't found an
20 opportunity to plant the horse.

21 As it moves on, we get into January, and he starts
22 talking with a different asset he has. Remember Gu Geng was
23 an IT specialist within Safran, another insider that he had
24 planted in the company.

25 He talks about how Gu has told him that Safran heard that

1 people were posing as company leadership and sending out
2 letters. This is a different scheme going on. And here he
3 talks with his associate, Chai Meng, about, Hey, is this us?
4 You know, is this another part of the MSS operation? And
5 they're back and forth about, you know, here's what we did,
6 what we didn't do, okay.

7 This is kind of -- it's almost a side route from the
8 planting of the malware, but it shows the other activities
9 they were engaged in.

10 But then January 25th, it finally happens. He sends the
11 message to Xu -- this is one coconspirator to another -- about
12 an overt act, saying, "The horse is planted. This morning."
13 Okay. And "the horse" is the malware.

14 And you heard from Agent James that that was the day when
15 they analyzed Frederic Hascoet's computer. That was the day
16 that the malware was installed -- two different types of
17 malware were installed on his computer.

18 He explained the horse is planted, the IP address is now
19 online, and the MSS is off and running. They have now hacked
20 into a Safran employee's computer with the help of this
21 defendant. Then the next day he tells them, "Destroy the
22 horse," and his agent acknowledges.

23 They go on, and you see more conversations with,
24 eventually, you know, this is only in effect for a few weeks
25 before there was a public report, and that led to the

1 discovery of this malware, and eventually Safran was sort of
2 at least on to it and started to take actions to fix this
3 hacking.

4 As they go through it, they start talking about --
5 fighting a little bit about what's going on. Here the insider
6 IT guy, Gu Geng, is told to check out this particular record,
7 the dmsdojo.com. If you recall from Agent James, that was the
8 website that the malware was designed to beak in to.

9 So you can see the company has figured out this is part
10 of the problem, and our inside conspirators who are committing
11 this crime are talking about, hey, they're on to us, they're
12 checking out this particular record. And here he is checking
13 with his other MSS associates about it.

14 Then you just see a number of things where they -- Xu is,
15 again, checking with individuals, trying to find out if
16 anybody's on to them, trying to see if they got caught.

17 Bear in mind, you don't do this operation, you don't go
18 through this kind of work to put malware on a computer for
19 public information, okay? All right. They may say, Well,
20 look, they weren't -- the computer didn't show whether or not
21 things were extracted. They couldn't tell one way or another
22 whether or not they successfully extracted documents from
23 there. But the point is they put a tool on there, they put
24 malware, two types, on there that was designed to extract
25 documents from that computer.

1 And remember who Safran is. Safran is in a joint venture
2 with GE. They make the LEAP engine. They have a factory,
3 obviously, over in China, where they're working on some parts,
4 but that is the technology that they are trying to acquire.

5 They don't have an engine of their own yet that they can
6 put on a plane. Right now they're designing a plane, the
7 C919, and the engine they're putting on it is the LEAP engine.
8 They're using the Safran GE engine right now.

9 So, yes, this is who they're targeting, another aviation
10 company, trying to get after one of their employees to exploit
11 that company and get around their security measures to get
12 into the company, okay?

13 No indication this is domestic surveillance. There's no
14 evidence of that. There's no statements about that kind of
15 stuff. They're trying to get in to and exploit a particular
16 computer for an aviation company that is a target.

17 There's no way they're going through all this expense,
18 this whole operation planting this horse because they want to
19 get the invitation list to the Christmas party, all right?
20 They're going after the crown jewels. They need to get in and
21 find more about this technology.

22 If we look on, they get to the end of this, and it says,
23 "No new news. Should be an unsolved mystery." "Ho ho."

24 Now, bear in mind, it was an unsolved mystery for a long
25 time, for four years, until the defendant's arrest and these

1 messages were discovered. You saw that Gu Geng and Tian Xi
2 were terminated in 2018 by Safran once this information was
3 discovered.

4 Bear in mind, if you go back to the cadre form, he did
5 well in 2014. They were proud of the work he did. That
6 happened to be the same year that he got the malware planted
7 in Safran.

8 But the hacking doesn't end there. If you turn forward
9 and you start talking about -- there's Sun Li who came and
10 testified. He was the IT person at Boeing, and he went back
11 and forth about how they contacted his parents, they recruited
12 him to come over.

13 And he kept telling them, I don't do the network
14 security. I do something else at Boeing. But bear in mind,
15 he's not an engineer. He's not going to be invited over for a
16 presentation with the AVIC professors or anything like that,
17 okay?

18 So why did they want to get ahold of him? Well, it makes
19 sense when you think of Gu Geng and Safran. If your job is to
20 get aviation technology from foreign companies and steal that,
21 you either need to work with the engineers or an IT person
22 inside. And they certainly went after that with Sun Li and
23 reached out to him.

24 And after they met with him -- remember he said he met
25 with a person named Cai in the hotel lobby, and they kept

1 trying to pay for his trip. They kept pushing him. He's
2 like, You don't need to pay for my trip. But they kept saying
3 how they reached out to his dad, and there's pressure applied.
4 There's definitely pressure applied.

5 There's another one in the evidence here, Exhibit 93b,
6 where he reaches out to a Honeywell employee; and, again, he's
7 asking about their network security for the same reason. This
8 fits with Safran. This fits with what he's doing with Boeing.
9 He's trying to get ahold of IT people within aviation
10 companies because his goal is to get into their platforms.
11 And the only reason you want to do that is because you're
12 trying to get trade secret information.

13 The last part of the hacking is what he does with some of
14 the guests that came over for these exchanges. And as you saw
15 in there, this was called the "Eighth Division Apply
16 Techniques."

17 The foreign folks would come over. One of the examples
18 we showed you was Li Jiang from 2014. Here they applied the
19 techniques. It says, "The laptop was not turned off.
20 Therefore, it could only work on the hard drive." And he
21 apologizes and says, "Sorry for troubling you this time."

22 But they meet with him again. They talk about how, Hey,
23 the expert doesn't know my true identity. I approached them
24 under the name of the JAST. Don't mention the materials. All
25 right.

1 So what happens after that? They have another meeting in
2 December 2014. This is from his calendar. It's from the
3 defendant's own calendar in the cloud. It says how they
4 brought Li Jiang to Nanjing, and Zha held a banquet, and they
5 applied the techniques. And what were the chats that happened
6 during that? That's how we know what it means by "Eighth
7 Division Apply Techniques."

8 It goes through and talks directly about how they're
9 working on the laptop computer, one portable hard drive, two
10 small drives. They brought him back to the hotel for him to
11 start dinner with Zha Rong. And then while they're doing
12 that, they are up in the hotel ripping off the guy's computer.

13 It goes on, saying, "Copying the entire thing needs three
14 hours." And his boss, who is down there at dinner, says,
15 "Speed it up. That's too long."

16 They go on and talk about how they're done -- if we go
17 back, they talk about how they're almost done, and they will
18 restore the scene. "Restoring the scene" meaning they're
19 going to clean up the hotel room that they just broke into and
20 get it back to where the person doesn't suspect that we just
21 ripped off what was in his computer. This is what they did
22 here in this occasion for one of the guests that they invited
23 over from an aviation company.

24 Now, there's one other example we sent in, talking about
25 how in April 2014 there was another individual who came for an

1 exchange, the Eighth Division Apply Techniques. That's the
2 defendant's own words. And you see later on he has a message
3 from where he has to tell his boss that the guest has it
4 turned off, all right?

5 So it's pretty clear what's going on here. Not some kind
6 of -- you know, there's no explanation for this, other than
7 they're recruiting, they're targeting these aviation
8 employees, bringing them over, and this is one of the methods,
9 one of the techniques that they can use to get the information
10 that they want.

11 Now I'm going to turn to the GE portion of it here. But
12 I want to at least mention, for Counts 1 and 2, what we've
13 talked about already in terms of the recruiting of the guests,
14 these exchanges, the Safran incident, the hacking in the hotel
15 rooms, you know, trying to use these compu- -- the exchanges
16 to get into IT people, all of this process, the whole
17 recruiting process that he describes in detail in the Gao
18 recording, this is enough for Counts 1 and 2.

19 Counts 1 and 2 is proving a conspiracy to steal trade
20 secrets, both economic espionage or trade secrets, for
21 Counts 1 and 2. You've already got enough before you even get
22 to the GE portion.

23 Now, the GE portion is definitely part of Count 1 and 2,
24 and that's what I'm going to turn to, but I want to make clear
25 to you that you may already be convinced that there is enough

1 there to convince you of those crimes before we even get to
2 the events of 2017 and 2018 with GE.

3 But let what we just talked about, how he operates, all
4 the lies, the deception, inform how you think about what
5 happened with GE. Now that you know how he operates, and who
6 he is and what he does, that should color everything you see
7 in that whole exchange regarding the GE side of things.

8 Now let's talk about this. Up in Dayton, you know, not
9 far from here, a long time ago, a couple of brothers invented
10 airplanes, all right? They did so with their own hard work,
11 their own innovation, their own brainwork, all right?

12 And then up the road in Evendale, not far from here, is
13 GE Aviation, and they continue on that tradition of
14 innovation, of great technological advancement when it comes
15 to jet engines.

16 As you heard, to build a competitive engine, it needs to
17 be light, it needs to be durable. And one of the key
18 components for GE Aviation engines is the use of composite fan
19 blade technology and composite cases.

20 What GE is able to do by building this kind of mold, this
21 very complex mold, and use lightweight composites to make
22 these fan blades, it makes them lighter. They're stronger.
23 They last longer. They require less maintenance.

24 By being lighter, it means the whole plane's lighter.
25 They can fit more people on the plane, or they can go further.

1 It's more money for the aircr- -- you know, for Delta, or
2 whoever is running the aircraft. It's more fuel efficient,
3 all right? It makes them the leader; the leader in the world.

4 And other companies have tried. They have tried to
5 develop similar or competing technology. They talked about
6 how Rolls-Royce, you know, has tried. They tried once before
7 and nearly bankrupted themselves. Now they're trying again.
8 They've got one in development, hasn't been certified, is not
9 on a single plane.

10 So for the last 20 to 30 years, if you want an engine
11 with composite fan blades, there's only one show. It's GE.
12 So for China, whose goal is to develop their own plane, some
13 day develop their own engine so that they don't have to buy
14 all of this stuff from foreign companies, they need to figure
15 out how to do the same thing.

16 And so composite fan blade technology is a very logical,
17 understandable target for them. And they certainly did it in
18 this case.

19 What you cannot deny is that even as other folks have
20 tried to develop the same technology, it takes time. It takes
21 years. It takes millions of dollars. Even if someone can
22 acquire some of the technology and shave off that time and
23 save some of that money, it is of huge benefit to a competing
24 entity so even a little piece helps.

25 They have tried to pour -- competitors have tried to pour

1 money into this and develop a similar thing; but, at the end,
2 the GE technology still stands alone. It doesn't have a
3 competitor that actually is on the market.

4 So if this person's job is to get trade secret
5 information from aviation companies, and you need to get a fan
6 blade, a composite fan blade, well, there's only one target
7 for you, and that's GE.

8 So sure enough, they look on LinkedIn, they do their
9 spotting, they do their assessing, and they identify
10 Dr. Zheng, the GE employee that came in here and testified.

11 And you know the whole story; how they recruited him, how
12 they first got him to come over for the initial visit. They
13 used a proxy, Chen Feng, to recruit him.

14 He suggested the topics for the meeting. Got him to come
15 on over. They go forward from there. Again, when he's there,
16 he decides to come over, and one of the things we point out is
17 in that exchange with Chen Feng, as he's getting ready to come
18 over, at one point the GE employee doesn't respond quick
19 enough, and then you get this email from jastxyj saying, "Did
20 you receive the earlier email? Please confirm." And he signs
21 it "Chen Feng," all right?

22 But this is Xu Yanjun jumping into the picture because he
23 knows -- you know, he's behind this. Sure enough, he comes
24 over for the visit and does the presentation in June of 2017.

25 Again, they meet multiple times. He meets -- obviously,

1 he meets him under the alias, doesn't use his true name.

2 Introduces him to another MSS person, Director Ji. They have
3 tea, lunch, dinner, do the presentation, give him cash, send
4 him on his way, all right? Fortunately, he didn't bring his
5 company computer.

6 And if you go back and look at the calendar references,
7 it shows Chai Meng met with him the day before, met with Xu
8 the day before to talk about this meeting.

9 Now, one thing to keep in mind, and this goes for
10 Dr. Zheng, Mr. Gao, some of the deception, you need to
11 understand how they talked with their own companies. He
12 didn't tell GE he was going over there. Same thing with
13 Mr. Gao.

14 Folks like this, they get recruited over. Whether they
15 know exactly who they're dealing with may not be clear.
16 Obviously, they do get lied to, but they lie to their
17 companies. They didn't tell them about the trips. They
18 didn't tell them they're getting paid in cash.

19 Why they do it, there may be a lot of reasons. It could
20 be ego. It could be money. It could be some desire to help
21 the old homeland. It could be pressure. It could be just
22 disgruntled. But bear in mind -- and we don't want sympathy
23 to be any part of this -- there could be a lot of motivations
24 for what's going on here on both sides of this; not just Xu,
25 but the people he's recruiting over.

1 His job is to seduce them and exploit them, exploit
2 whatever emotions they have, slowly, and then you can see how
3 it worked.

4 Now, in the operation, as you heard, they found --
5 eventually, the FBI went and interviewed Dr. Zheng and
6 convinced him to cooperate. He did this with, obviously, you
7 know, his counsel.

8 I think in the opening, the defense talked about "they
9 broke Dr. Zheng." You can decide -- you saw him testify -- if
10 you saw anything that indicated that.

11 There was testimony from him, from the FBI agent. They
12 treated him politely. They even looked after his own
13 security. There was no evidence of that. He was simply
14 confronted, and he decided to cooperate. Any discussion of
15 breaking Zheng is just a red herring.

16 So let's turn to the actual communications. At that
17 point, the FBI reached back out to Chen Feng. Well, actually
18 before that. Obviously, he had said thank you. So they reach
19 back out to Chen Feng to connect with him again, and then Chen
20 Feng does the handoff to Mr. Xu, and they're off and talking
21 with Mr. Xu, okay?

22 So as we go through this, you'll see that they talk about
23 when he can come back. And we get to this point where in this
24 message, Mr. Xu states -- and we're in January 9, 2018, he
25 states, "He will see what technology is desired and let you

1 know what to prepare. For your end, please prepare the plane
2 ticket," and explains the rest of it, and then chides him to
3 pay more attention to WeChat, okay?

4 So note, he does let him know that he will tell him what
5 to prepare so, obviously, the GE employee asks what he should
6 bring. There were communications about should I bring this,
7 should I bring that, until we get to his communication about a
8 week or so later, when Mr. Xu, still using his alias, says,
9 "Right now there's nothing for you to prepare on my end."

10 But then the message after that is -- excuse me. Is a
11 few days -- actually, a week or so later, the message from the
12 GE employee mentions speculation about laying off in his
13 department.

14 And as you heard from the testimony, there were layoffs.
15 There were public reports, if Xu wanted to confirm that in the
16 news. There were press reports that there were layoffs at the
17 time. So he indicates that he's concerned about that, and
18 that's why he's trying to collect.

19 So immediately, for an MSS officer, that shortens the
20 time period and puts a little bit of urgency. And we
21 definitely see a change in what Mr. Xu does from this point
22 forward.

23 He tells him right there, "Okay. Try your best to
24 collect, and we can talk by then."

25 And then he says, "Domestically, there is more focused on

1 the system code." All right. That's a collection target.
2 That's tasking.

3 As we go to the next slide, he clarifies, "What exactly
4 do you mean?" Xu gives him a clarification of what he means,
5 "The system specification and design process." And he gives
6 him an email to send it to.

7 Again, this is tasking. This is trying to get your
8 target to start collecting information for you, just like
9 Mr. Olson testified.

10 As we get into this, let's take a look at this message
11 right here. You heard once again from the defendant, where he
12 said, "It might be inappropriate to send directly from the
13 company," right?

14 Again, company security is just a nuisance. It's an
15 obstacle for him to circumvent, and he's looking for somebody
16 who is willing to do that with him. So it's right here that
17 he is targeting information he believes would be trade secrets
18 because he knows there's company security. He wants to get
19 around it.

20 He gives him a new email to help circumvent the process.
21 And then they move on to where the GE employee sends a slide;
22 and, again, GE came and told you that they had changed some of
23 the information on here to make sure they weren't revealing
24 anything too sensitive, but it does indicate it's proprietary,
25 and he sends this along, saying "is this what you mean by the

1 system code" to help clarify what was already asked for, what
2 was already demanded by the defendant, Xu.

3 What's really interesting is what happens after this.
4 Two emails right in a row on -- as we get into the May 5th
5 time period. He sends this email where he says, "Here are the
6 domestic requirements that I know of. Can you take a look and
7 let me know if you're familiar with those."

8 All right. Remember from Mr. Olson, where he talked
9 about you meet with the experts, you define the requirements
10 of what you need. Intelligence officers don't waste their
11 time looking for stuff that's public. They may use that to
12 define what the requirements are, but what they are trying to
13 do is figure out what they don't have, what is not public that
14 they need.

15 And so he goes and gets requirements from the experts in
16 China, and he delivers them here in an email to the
17 GE employee. He even calls them domestic requirements.

18 This is a complete hallmark of an intelligence operation,
19 and they're clearly tasking him to get into something that is
20 trade secret.

21 Let's go to the actual requirements. You heard Mr. Kray
22 from GE testify about these. What he told you was these are
23 pretty good questions. These are pretty good questions.
24 They're looking at stuff that if you answered these questions,
25 if you got into the information behind this, yes. Yes,

1 absolutely, you would be getting into GE trade secret
2 information.

3 So did the defendant ask for trade secret information?
4 Yep. It's right here in an email. He even calls it domestic
5 requirements. They didn't even bother to change some of the
6 language. It's written asking for "foreign countries
7 structural materials of rotor fan blades" all right.

8 They know they're targeting foreign technology. They
9 didn't even bother to change the language in their document
10 when they sent it over to him. They wanted to know foreign
11 countries' composite material rotor fan blade details.

12 And a lot of this stuff, when you start getting into
13 prepreg, which is the material that they use, and then all
14 these different tolerances, how they put together the
15 composite, the orientation of it, that's some of the secret
16 sauce. And Mr. Kray said, "These are good questions. They
17 are getting at it. They are really getting at what we do."

18 That was on February 5th. That wasn't the only thing he
19 sent. He sent a second email same day. By the way, at this
20 point, all that was sent to him was just saying, Hey, I might
21 be laid off, so this is a good time for me to collect. That's
22 all that happened.

23 At arrest, he took over. He was the aggressor. He is
24 the one going after it. Sends these two emails. One with the
25 domestic requirements where he is directly targeting "here are

1 the questions, we need answers" regarding GE's trade secret
2 technology.

3 Then he makes a more aggressive statement, saying, "Here
4 are the instructions. Can you download a directory of your GE
5 work computer?" He gives those directions to the
6 GE employee.

7 At this time, they're still trying to talk about going to
8 China. Obviously, Mr. Xu thinks he's got a good, willing
9 source inside GE. He's asked for information that is trade
10 secret technology.

11 If you have any doubt about that, you can look at this
12 email, where he's told, Hey, the stuff you're asking about,
13 because the involvement of GE intellectual property and
14 commercial secret, such as the previous email I sent to you,
15 he's put on notice many times.

16 The actual email that sent that slide had the word
17 "proprietary" on it. He comes up with his own list of
18 questions, which does target trade secret information. Then
19 he's told in a message, Hey, what you're asking for is getting
20 into our IP, our proprietary trade secret information or
21 commercial secret information.

22 Did you see him slow down? Does he back off? No. Not
23 at all. This doesn't -- again, these are the -- he's blowing
24 through these stop signs. You know, this is just stuff for
25 him to get around. He thinks he's got a target, a willing

1 target insider, and he's looking to exploit it. He thinks the
2 door's open a crack, and he's trying to bust it down.

3 So we get into this. He says regar- -- he emails back,
4 "Hey, regarding your concerns, let's just talk about it when
5 you get back to China." Kind of blows him off there and moves
6 on.

7 Again, he still thinks he's coming back to China. So at
8 this point, the GE employee backs off. And this is the FBI
9 operation, all right? I think it was made clear by the agent,
10 this is Agent Hull sending these messages, you know, as the
11 GE employee.

12 He sends the messages and says, "Hey, sorry. I can't
13 come back. I've got to go to France for work." He did not
14 invite him to France. He did not tell him anything else. He
15 just says, "Sorry, I'm not coming to China." Period. Okay.

16 Then he also says, "You asked for the directory. I'll
17 get you the directory." Okay. All right. And they talk
18 about maybe they can meet some time in the future.

19 But he says, "I know you asked for the directory. I'll
20 send it over," okay?

21 So after we go through the process, I think you heard
22 that described, how GE went through the process of actually
23 compiling a real directory off of Dr. Zheng's computer and
24 then went through and deleted what they needed to to protect
25 their own information. That was provided to the FBI, and they

1 were able to send it over.

2 This is sent on Valentine's Day, February 14th. Okay.
3 Up to this point, he had been pushing, pushing, pushing. Then
4 he finds out, oh, he's not coming to China. Then he gets a
5 directory.

6 And all the sudden, Hey, let's meet in Europe. Suddenly,
7 Xu is the one pressing to meet him somewhere else. Says
8 obviously he's not going to meet you in the U.S., but he wants
9 to see if you're visiting any other countries and wants to see
10 if there's a way where they can still meet.

11 Obviously, the director, he has whetted his appetite. He
12 thinks he's got an insider who's willing to give him
13 information; and, again, he is trying to exploit it and get
14 whatever trade secrets he can.

15 Same day he sends all those messages, he sends an email.
16 This is a pretty anxious person at this point. He wants to
17 know, "Hey, when are you coming back? By the way, I've got
18 some questions about the directory" that he asks at the
19 bottom, all right?

20 You get the response back. The GE employee doesn't
21 commit to any of this. It was never suggested that he meet
22 with him in Europe. This was all Mr. Xu pushing, pushing,
23 pushing.

24 He continues to try to press for details to see if he can
25 meet; and, again, the GE employee deflects, you know, kind of

1 backs off, plays a little bit hard to get.

2 So he talks about trying to -- you know, can you please
3 make the arrangements. This is Xu telling him make the
4 arrangements so that he can make his own, all right? And he
5 keeps pressing and pressing, okay? Again, looking for more
6 details, okay?

7 Then there's a phone call. He tries calling. He says,
8 "Hey, sorry I missed your call." That tells you how anxious
9 he is, that he went ahead and tried to call the GE employee
10 spontaneously because he hadn't quite gotten any commitment as
11 to where the guy was going. That tells you how much he's
12 pressing him.

13 Then the GE employee sends back a clarification for his
14 questions. This is responsive to Xu's own questions about the
15 directory. But then they do set up a call. And the phone
16 call is pretty revealing. A lot of it gets into the
17 logistics. A lot of it is talk about his personal life and,
18 as Mr. Olson explained, this is part of what a case officer
19 tries to develop in terms of understanding a target and
20 knowing their whole life.

21 But what's really interesting is when the topic of the
22 directory comes up. And by the way, it is Xu that brings it
23 up. They're talking about now maybe we can meet in Europe.
24 And he says, "By the way, the document list that you sent last
25 time is pretty good stuff. I wonder if it's convenient for

1 you to bring that stuff." He's telling him to bring the
2 computer to Europe. Wants to see if he can bring it along,
3 all right? Yet another tasking.

4 He previously asked for stuff related to the system code.
5 Then he sends the domestic requirements, wants those answers.
6 Then he says, "Hey, can you print a directory?" He gets a
7 directory and says, "Hey, bring it. Can you bring the
8 computer?" It's tasking after tasking, where he is initiating
9 the action.

10 He's asking, demanding, trying to get this information,
11 inside information. Somebody he knows. It's a composite
12 expert inside GE that he thinks is on the outs with the
13 company. He wants to get this stuff. He wants the crown
14 jewels, the trade secrets. He asks him to bring the computer
15 with him. Again, nobody else brought this up. This was Xu
16 bringing this up.

17 They continue on in the conversation, and he talks about,
18 "Hey, can you export it out?" Not just bring the computer.
19 Can you actually export this stuff or download it.

20 And as you see in the instructions, the jury
21 instructions, about different ways in which you can commit
22 these trade secret crimes. It lists all those different
23 verbs, you know: copy, photocopy, sketch, draw, download,
24 things like that. Copy, duplicate, this exploiting the stuff,
25 it's right in line with those instructions, okay?

1 He asks him, "Can you export the information out of your
2 GE computer," all right, because he wants to get it in a
3 portable hard drive.

4 They continue on. And this is an interesting thing that
5 talks about the insight of an MSS officer who is trying to
6 develop a long-term relationship. He says, "We don't have to
7 rush because if we're going to be doing business together,
8 this won't be the last time," right? Notice that phrase
9 "doing business together." This is a transaction. This is
10 purely transactional. Quid pro quo, all right? He is trying
11 to get as sensitive information he can from somebody he can
12 exploit inside the company. As Mr. Olson explained, just like
13 a spy would. That's what they do.

14 So as we get into this, here's some more in the phone
15 call. They talk about how, hey, some other things we can just
16 talk about in person, all right. They're not going to talk
17 about everything. We're going to wait until they get there.

18 So as we move on, they have some chats. They're getting
19 ready to meet. At this point, they talk about it, and the
20 GE employee mentions -- through Agent Hull, they send a
21 statement saying, "Hey, I don't know if you're going to be
22 able to read this when you get to Europe," in terms of
23 downloading it from my computer.

24 And he clarifies, "Hey, does this mean I will not be able
25 to view these documents after I bring them back?" So if there

1 is any doubt, he's alleviated that right there. His plan was
2 to get the documents and take them back to China, okay? He's
3 very clear. "Does this mean I won't be able to view these
4 once I bring them back?" All right.

5 And then later on he says, in the next part of it, "Is it
6 possible to dump to a portable hard drive or a USB drive from
7 the work computer in advance?" Okay. Again, he repeats the
8 tasking. Let's dump it to a hard drive in advance so that
9 it's an easy handoff.

10 One more here. As if the others weren't enough to
11 convince you, one more here. A few days later, he does it
12 again. This is now several times he has asked him to download
13 the information, and he throws this out, "Anything else will
14 do." I've got you working on the cake, can you throw in any
15 icing, because I'll take anything you can download.

16 Again, anything design related. He knows he's talking to
17 a composite expert within GE. It's a key target. He's
18 trying -- and he thinks the person is on the way out, and he's
19 trying to get as deep and as good a information as he can get,
20 and as much as he can get.

21 By the way, going back to that slide, notice the word
22 "download." Again, that's one of the words in the
23 instruction. The word download, that's one of the ways you
24 can commit these crimes.

25 So, again, they fight over the location. At one point,

1 he suggests -- you heard the conversation from the translator,
2 who talked about how they had these various phone calls, and
3 they talked about fighting over where to meet. At one point,
4 the defendant suggested we can meet at a train station at the
5 border. That's how desperate he was for the handoff. But
6 eventually, he relents and agrees to meet, okay? They set up
7 the name of the coffee shop, and they're there.

8 Now, we'll get to talking about the meeting in Brussels
9 here as I wrap this up, but I do want to note, look, with
10 respect to these attempt crimes, well, the conspiracy crimes
11 and the attempt crimes which cover the GE stuff, he's already
12 committed them. You know, he's already taken numerous
13 substantial steps toward this.

14 He's already asked for the trade secrets multiple times.
15 He's tasked this person over and over again trying to get him
16 to dump this computer. Okay. It's done.

17 So let what happened in Belgium just further confirm for
18 you, further resolve all doubt that that's exactly what was
19 happening here and that that's what he intended.

20 He had already taken many substantial steps and committed
21 these crimes before he had even stepped foot in Brussels.

22 A line of person in his work, he knows he's committing
23 the crimes. He knows he's taking a risk by going to Europe,
24 okay? Most of what he's done that we showed you, he's doing
25 inside China where he has protection, all right?

1 For him to leave and go to Europe is a big risk. He's
2 going to have to lie to the French folks to get his visa,
3 which he does, and he's going to have to go to Europe and take
4 that risk, and he knows that that's what he's doing.

5 But that tells you something. That tells you how
6 valuable this information was and that he thought he had the
7 mother lode. He thought he was going to come back a hero to
8 the MSS, maybe get Zha Rong off his back. That's what he
9 thought. And that shows you, by the fact that he was so
10 desperate to set up these meetings and to take the risk and
11 come to Europe and to come to Belgium.

12 So look how he came. He brought his cash, and he brought
13 the devices to download everything. Remember there was a one
14 terabyte hard drive that was found. There were several SD
15 cards that you could download information on to, large
16 devices that -- large storage devices that were pretty much
17 empty. They were ready for copying. He was anxious to get
18 this jackpot. So he brings the cash.

19 He brought the multiple phones, which we already talked
20 about, including the 5s. Mr. Xu Heng also brought two phones.
21 He brought these devices. On there, they used the codes. He
22 even knows what he does is risky, sends the message to his
23 wife about if something happens.

24 Now, there were two particular photos that we pointed out
25 to you that were on the phones. One in particular was this

1 list of questions related to the fan blade technology. And
2 what this showed you was, you know, his notes on some of the
3 things he wanted to discuss and follow up on the information.

4 The other list, as Mr. Olson explained, this is very
5 symbolic of the type of list that typical CIA officers and
6 intelligence officers use when they are trying to profile an
7 asset.

8 These were the two lists of questions that he had on the
9 phone when he showed up in Belgium, along with the cash and
10 along with the storage devices.

11 And then he also had this. You heard the testimony that
12 on the phone, one of the phones, they had downloaded over
13 200 pictures of the GE employee from the GE employee's WeChat
14 account. They had been WeChatting, so he would have had
15 access to it as a friend.

16 And there was a lot of testimony about how that might
17 have been used, what that might have meant. What's
18 uncontroverted is that he did, in fact, download those
19 200 pictures, put them on a phone and brought them to a
20 meeting. May mean a lot of things. First of all, it's just
21 creepy.

22 What it's not, it is not normal. This is not the normal
23 behavior of somebody engaging in legitimate activity. This is
24 somebody who knows and engages pretty regularly in criminal
25 activity, and this is the type of information you bring for

1 leverage, for intimidation, maybe simply background
2 information, but it's not normal.

3 This is not somebody seeking public information. This is
4 not somebody seeking something innocently. This is an
5 operation, an intelligence operation. And every single piece
6 of evidence leads you to that conclusion. That is exactly why
7 he brought this stuff.

8 It was an operation, and these were two MSS spies showing
9 up in Brussels to complete the job. They brought everything
10 they needed to get the laptop. They brought the cash. They
11 brought the pictures. They brought further questions, because
12 they knew who -- he knows who he is, and he knows what crimes
13 he's committing.

14 One last point of emphasis that -- and then afterwards,
15 they wipe the phone. Mr. Xu Heng is released from jail, and
16 the next day we showed you the iCloud records showing one of
17 the phones was wiped, and that goes back to an iCloud account
18 that Mr. Xu Heng had used.

19 So at least for his associate who got released, he
20 immediately turns around and tries to -- and actually does
21 destroy evidence.

22 I want to, first of all, emphasize the GE portion of it
23 that we just walked through. So it began and ended with what
24 happened there. That's applicable to the conspiracies in
25 Counts 1 and 2. It's also applicable -- it is the main part,

1 it is the part that is in Counts 3 and 4, which are the
2 attempts, all right? And we believe that the evidence in
3 there supports all of those.

4 I appreciate your patience. I want to leave you with one
5 last thought.

6 So here in America, we are -- we use the phrase "we're a
7 nation of laws." And the laws in this case, trade secret
8 laws, espionage laws, are set up for one fundamental
9 principle.

10 You can develop technology with your own innovation, your
11 own hard work. You can buy it. But you can't steal it.
12 That's what the law is for, to tell you you can't steal it.
13 We learned this when we were kids. You don't steal.

14 And what you saw in the evidence in this case was over
15 and over and over again how Mr. Xu, the MSS, and his other
16 colleagues in these China entities had been engaging in a
17 large, concerted effort to engage in this kind of theft of
18 trade secrets from aviation companies in the U.S. and in
19 companies around the world.

20 And the compelling evidence that you heard in this case
21 came from his own words, came from his own mouth; his
22 recordings, his chats, et cetera. It shows far beyond any
23 kind of reasonable doubt who he is and what he does.

24 He is Xu Yanjun. He is a spy. His job is to steal
25 aviation technology and trade secrets. He does it by luring

1 employees over to China and exploiting them, stealing from
2 them, doing whatever he can, compromising them.

3 He engaged in the Safran hacking and helped plant malware
4 on an aviation employee, and he extensively went after a
5 GE composite engineer and tried to get the entire GE laptop,
6 including all its trade secrets that were on it.

7 That's who he is. That's what he's done. And he's
8 guilty. He's guilty of all four crimes.

9 And on behalf of the United States, we ask that you
10 return a verdict of guilty. Guilty on all crimes.

11 Thank you.

12 THE COURT: Thank you, Mr. Mangan.

13 The government has presented the first portion of its
14 closing argument. It's 1:00. We're going to break for an
15 hour and 15 minutes so you can have lunch upstairs.

16 Take the break. No discussion among yourselves yet.
17 We're not quite there. Continue to keep an open mind. We
18 still got a closing argument to hear. No independent
19 research. No discussion with anybody.

20 Enjoy your break. Enjoy your lunch. Out of respect for
21 you, we'll rise as you leave for an hour and 15 minutes.

22 (Jury out at 1:05 p.m.)

23 THE COURT: The jury's left the courtroom. The door
24 is closing. We're about to break for an hour and 15 minutes
25 for lunch.

1 Is there anything that requires my attention before we
2 recess from the government?

3 MR. MANGAN: No, Your Honor.

4 THE COURT: Defense?

5 MR. KOHNEN: No. Thank you, Judge.

6 THE COURT: All right. See you at 2:15.

7 (Lunch recess.)

8 THE COURT: We're back in the open courtroom, on the
9 record. The government's team is here, defense team is here,
10 including the defendant and two interpreters.

11 Are we ready to get the jury from the government's
12 perspective?

13 MR. MANGAN: Yes, Your Honor.

14 THE COURT: Are we ready from the defendant's
15 perspective?

16 MR. KOHNEN: Yes, Your Honor.

17 THE COURT: Let's call for the jury, please.

18 (Jury in at 2:21 p.m.)

19 THE COURT: You may all be seated. Thank you.

20 Members of the jury, all of them have returned to the
21 courtroom after the lunch break. Welcome back. Thank you for
22 your close attention.

23 We'll now proceed to hear closing argument on behalf of
24 the defense.

25 MR. KOHNEN: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 MR. KOHNEN: May it please the Court, counsel, my
3 esteemed colleagues, ladies and gentlemen of the jury. Good
4 afternoon.

5 Like Mr. Mangan, I, too, want to thank you for your
6 service on behalf of Mr. Xu and on behalf of my colleagues.
7 We couldn't do it without you, and we really appreciate your
8 attention.

9 What I'd like to do, as soon as I get this frog out of my
10 throat, is ask you to remember a couple of very important
11 principles as I go through my presentation this afternoon.

12 I want you to remember Judge Black's instructions. I
13 want you to remember his instruction about the burden of
14 proof, and I want you to remember especially about the
15 presumption of innocence.

16 With respect to the burden of proof, remember proof must
17 be beyond a reasonable doubt in order to convict. I don't
18 want you to ever let that leave your peripheral vision during
19 my presentation, if you would, please.

20 Almost as a matter of housekeeping, what I'd like to
21 do -- it will be a little bit redundant, but what I'd like to
22 do is reply to a couple of the points that Mr. Mangan made
23 during his closing argument before I begin what really amount
24 to my prepared remarks.

25 As I said, it's going to be a little bit redundant, but

1 that way I won't miss anything, and I hope I'll get the
2 important stuff to you.

3 The first thing that Mr. -- or at least one of the first
4 things that Mr. Mangan talked about was this vast conspiracy,
5 a mountain of evidence. And he talked about -- and he was
6 talking about the conspiracies that allegedly began earlier, a
7 conspiracy that involves the People's Republic of China as an
8 unindicted coconspirator.

9 Ladies and gentlemen, that's 1.4 million people. So
10 rather than consider the intent of 1.4 plus million people or
11 their representative or representatives, let's do what we came
12 here to do. Let's focus on one person, my client, Mr. Xu.

13 This is a man and the only person whose guilt or
14 innocence you are here to decide about. You want to decide
15 primarily about his intent and his knowledge. His intent, his
16 knowledge. Not Chen Feng's, not Zha Rong's, not Tian's. His.

17 Another thing I want to tell you is, Mr. Mangan's remarks
18 to the contrary notwithstanding, this case is very much about
19 GE Aviation.

20 All of the other companies that Mr. Mangan named and who
21 might be named in these overt acts are tangential. They're
22 tangential. They bring the government's conspiracy back to
23 2013, to be sure, and that's by design. But the focus of this
24 investigation began, you'll recall, with General Electric
25 Aviation, and I submit that that throughout has been the

1 primary focus.

2 A couple of -- I'm going to jump around a bit. I hope
3 you'll forgive me. But one of the things I also found
4 puzzling, a bit troubling, is this expressed belief that
5 Mr. -- Mr. Mangan's remark that Mr. Xu thought that the
6 material that he was storing in a cloud that ended up on a
7 server in California was never going to see the light of day.

8 How does a man as sophisticated as Mr. Olson claims, as
9 sneaky as Mr. Mangan and Ms. Glatfelter claim, miss that?

10 Ladies and gentlemen, I have an iPhone. I submit, I
11 suspect that probably at this time more than half of you have
12 iPhones, or at least half. We allow our information to be
13 stored in the cloud and, ultimately, on an Apple server
14 because we've got nothing to hide, right?

15 Another thing that puzzles me -- and Mr. Mangan tried to
16 explain it away, but how does a man who is a superspy travel
17 under his own identity? How does a man who is taking a
18 sneaky, nefarious, undercover trip to the Paris Air Show, of
19 all people -- of all places, travel under his own identity?

20 If this was such an important project, such a secret
21 project, such a stealthy project, don't you think he would
22 have been able to obtain a counterfeit or even a genuine
23 Chinese passport in a second name? Folks, these things don't
24 make sense. It's because they're cobbling things together and
25 trying to make them fit.

1 Now, different identities, I think -- I get the sense
2 that we may all be on the same page. I mentioned in my
3 opening, I thought it was kind of cute, when you log on to a
4 company's website and you see that attractive young person in
5 the bottom right that says "Hi, I'm Jane. How can I help you
6 today?" we know that's not Jane, right?

7 But the fact of the matter is -- and part of what
8 Mr. Mangan said is correct. If Mr. Xu comes up to somebody
9 and says, "Hi, Yanjun Xu from the Ministry of State Security,"
10 you're going to go "whoa," right?

11 If Special Agent Hull went to Lowe's and introduced
12 himself to the person at the checkout as FBI Special Agent
13 Hull, you go "whoa." I'm a lawyer. I don't want people to
14 know I'm a lawyer sometimes when I'm dealing because they're
15 afraid I'm going to sue them. And when I was a federal
16 prosecutor, which I was for 16 years, I didn't advertise that
17 either.

18 So the aliases, I think we can understand why Mr. Xu
19 would hide his MSS affiliation. But one of the things I also
20 want to be careful about is this accusation that we ever
21 denied that Mr. Xu was using the alias Qu Hui. That's my
22 pronunciation.

23 Now, what I meant when I mentioned that in my opening
24 statement is something that we'll get to in a little more
25 detail. You're going to conclude -- you've already concluded

1 that you can't tell who they're really communicating with on
2 the other end. You don't know whether it's Mr. Qu Hui, or
3 whether it's Mr. Chen Feng, or if it's Mr. Xu, or if it's
4 someone else, right?

5 I think we've got to come to accept that, folks, because
6 nobody knew for months that Mr. Zhang was actually Special
7 Agent Hull, right? I mean, it's a two-way street.

8 Mr. Mangan mentioned Linda Li. I'm not abundantly
9 familiar with Linda Li, and neither are you because we didn't
10 hear her testimony.

11 And I submit to you that maybe it would have been helpful
12 to hear her testimony. I think it certainly would have been
13 more helpful than the testimony we got from Arthur Gao and
14 Sun Li, and even to some extent David Zheng because they
15 didn't take us anywhere. They not only didn't take us to a
16 point beyond a reasonable doubt, they didn't take us to any
17 point of clarity.

18 And this claim that Mr. Xu is some kind of evil
19 recruiter. He's a recruiter. Nobody's ever hidden from that.
20 He's affiliated and works for MSS. Nobody's ever hidden from
21 that.

22 And while we're at it, you know, that recording of the
23 meeting he had after Arthur Gao's interview, when he talked
24 about security is tight, Mr. Mangan said that he refused,
25 you'll recall, to accept the security features that the

1 company's -- or the security requirements that aviation
2 companies put on their employees. That's wrong.

3 Go back and look at that transcript, if you'd like. He
4 said security is tight, and he moved on. The fact of the
5 matter is, it reads to me and it will to you like he was
6 accepting that fact and they were going to do different
7 things; and, you know, that's precisely what started, at
8 least, to happen with David Zheng. And we'll get to that
9 shortly.

10 THE COURT: Can you keep your voice up?

11 MR. KOHNEN: I'm sorry. Yes.

12 Ladies and gentlemen, the other thing that I want to
13 confront right up front is this hacking of Safran and the
14 confusing confusion that the government has created between a
15 hacking event of the mother company in France and the malware
16 that was planted on the computer of the French Safran
17 computer -- Safran engineer, Hascoet. We'll get to that in a
18 minute, but I'd like you to please keep an open mind about
19 that because it's not as it seems.

20 These references to the Eighth Division and the applied
21 techniques are all very cryptic and kind of ill-defined here.

22 And Mr. Mangan said, and I think I'm quoting him, "It's
23 pretty clear what's going on here. A major component of the
24 first conspiracy and first attempt counts, and it's pretty
25 clear what's going on here." That does not sound like beyond

1 a reasonable doubt to me.

2 I'm not going to get into a battle of words about whether
3 the FBI broke Zheng, David Zheng, or didn't break David Zheng.
4 You decide for yourself. Two FBI agents hot-boxed him,
5 interviewed him alone, unannounced, for seven hours. Do you
6 think that was a pleasant experience? Do you think they
7 treated him well? Oh, I'm sure they treated him like a king
8 after he joined Team USA, as they say, right? But that's when
9 they wanted something from him. I guess they got it on the
10 stand here.

11 By the way, the layoffs thing. Mr. Mangan tried to make
12 an excuse there for Agent Hull's lie when he had taken over as
13 David Zheng, and he sent an email purportedly to Mr. Xu saying
14 he was worried about layoffs, and Mr. Mangan said, "Well,
15 there were layoffs. It was in the paper and stuff."

16 Ladies and gentlemen, David Zheng had already been fired,
17 or at least on leave without pay. A layoff from GE was
18 probably the least of his concerns at that point.

19 Another thing, and I'm going to tell you this just in
20 case I forget. I thought that the words that -- the statement
21 that Mr. Mangan attributed to Nick Kray, the GE engineer, were
22 pretty telling, and they were words that I found and are
23 interesting.

24 Kray talks about what I think Mr. Mangan called a task
25 list, whatever it was, that list of questions that were on

1 Mr. -- well, we think Mr. Xu's phone when he came to Belgium.
2 And Kray's testimony was, "Well, the information behind
3 this -- those are good questions, but the information behind
4 this, that would be our key tech information." I think "the
5 key technical information" was the way he referred to it.

6 How far behind? He didn't mean -- I didn't take it.
7 You're the judge. He didn't mean explicit answers to those
8 questions. He meant, and I think he said, Well, if somebody
9 knew what they were asking, and there was a conversation, and
10 they got layers behind these questions, then yeah, our key
11 information would be susceptible.

12 And, ladies and gentlemen, I don't fault anybody for
13 protecting that key information, but I want to make sure that
14 you all get the clear story so that you can make a fair and
15 objective assessment.

16 So let's talk about a couple of other things that this
17 case is not about. The government's efforts to the contrary
18 notwithstanding, this case is not about whether Mr. Xu was
19 employed by MSS. It's not about whether he was a spy, if you
20 want to call him a spy, whatever that means. And neither of
21 those statuses make him guilty in this case. Let's agree
22 absolutely on that.

23 And, again, these sort of frightening allusions -- with
24 an "a" -- to military and classified information, folks,
25 they're designed to scare you. GE doesn't make a polymetric

1 [sic] fan blade for military aircraft.

2 THE COURT: Please keep your voice up.

3 MR. KOHNEN: I'm sorry. It's not about EARS
4 violations, it's not about iPhone violations. What this case
5 is about is the ultimate and only question for your
6 consideration, and that is has the government presented enough
7 evidence, a good enough evidence to convince you, beyond a
8 reasonable doubt, that Mr. Xu tried to obtain trade secrets.
9 The government has not presented sufficient information for
10 that.

11 Judge Black has instructed you on the illegal transfer of
12 science and technology, and it's a narrow definition. Please
13 read it and heed it because the evidence shows that Mr. Xu was
14 engaged in the legal collection of aircraft technology.

15 This case is about a man who was caught up in a
16 controversy between the U.S. and China over China's advancing
17 competency and abilities technologically. And this case is
18 about, I'm sorry to say, General Electric and the FBI trying
19 to send a message to China and to slow China's progress in
20 developing composite technology, which we all now know will
21 eat away at General Electric's market.

22 Believe what you will about the government's evidence in
23 this case, ladies and gentlemen, but there's no way that you
24 can conclude, beyond a reasonable doubt, that our client has
25 intended to steal trade secret information as Judge Black has

1 defined it.

2 There's one place, as I mentioned earlier, where the
3 government's evidence falls woefully short. I'd like you to
4 think about the fact witnesses I mentioned: Arthur Gao, Sun
5 Li, David Zheng. What happened there? Nothing.

6 There were no requests for secret information. There was
7 no "ask" there. There was no "there" there. These were the
8 government's witnesses, and they were honest.

9 So let's talk a little bit about how the government
10 failed, and let's talk about Arthur Gao, a star witness. Poor
11 Arthur Gao. I mean, honestly, I repeat it, it's hard to
12 understand why the government even called him as a witness
13 because the bottom line to his testimony is what we have been
14 saying all along.

15 Sure, Mr. Xu was trying to -- was trying to cultivate
16 experts from abroad. Sure, he was trying to get them to share
17 their expertise. Sure, he paid them and wined them and dined
18 them, and that's -- what does that prove exactly?

19 Here's why Arthur Gao is the prime example. The MSS
20 literally had decades to get to Gao and to try to ask him for
21 trade secrets. That's what they wanted. He lectured there
22 beginning in 1997. By my math, that's 24 years ago. I think
23 Mr. Mangan talked about planting the seeds. Well, for crying
24 out loud, if you planted the seeds 24 years ago, don't you
25 have a garden by now? Nothing.

1 He met with Zha Rong, this person Zha Rong at NUAA.
2 Nothing. He went to China in 2016. Nothing. They gave him
3 money. They paid for his flights, but no asks. They didn't
4 even -- he wouldn't even say that they said something like,
5 "C'mon, you know, make a few copies of your files for us" or
6 something. Nothing like that.

7 What did they ask for from him? "Anything will do." Do
8 you remember him saying that over and over in response to the
9 questions? "Anything will do. Art, just send us whatever you
10 can." That's the way it worked. That's what they were
11 looking for.

12 Gao goes to China in 2017. What's he ask? Four super
13 general presentation topics on engineering was his test- --
14 engineering presentation topics was his answer. He agrees
15 they had nothing to do with secret proprietary information.

16 In 2018, he talks about returning to China. You'll
17 remember Mujin. I think there was a certain fondness there.
18 He WeChats with her. She sends him some specific engineering
19 questions.

20 Once again, Mr. Gao describes them only as general
21 engineering questions. He was asked, "Anything from
22 Honeywell?" Nope. "Anything about product or material that
23 Honeywell was working on that wants you to keep secret?"
24 Nope.

25 The later technology that Gao shared, it turned out, at

1 the very end of his testimony, I think you'll remember, was
2 stuff that he had worked on 20 years ago.

3 Go back to the judge's definition of a trade secret.
4 Something a company wants to keep secret because it provides
5 them with a competitive advantage and makes them money. Do
6 any of the questions that you recall or answers that Mr. Gao
7 gave reflect trade secrets as the judge has defined them?
8 They do not.

9 Meanwhile, poor Mr. Gao has to enter a guilty plea to --
10 what did he enter a guilty plea? Something completely
11 unrelated to this because, as he admitted, he made a mistake
12 and he said some stuff, unsolicited, to Mujin. That's how
13 they got him here. But he helped our case and not the
14 government's case.

15 So then we heard, and I think we have -- might have this
16 in the wrong order, but from this gentleman named Sun Li, who
17 is the government's star witness number two. He's the former
18 Boeing IT supervisor.

19 Mr. Mangan had a pretty fanciful theory about why they
20 reached out to Mr. Sun Li. I don't know if it's partially
21 true or not, but you remember Mr. Li 's testimony. And if
22 you're like me, you'll remember sitting here going, why did
23 the government bring this guy all the way from Washington to
24 testify about what amounts to nothing? There was no evidence
25 about trade secret. There was no pitch that he could help

1 them with IT stuff. And despite -- this is important because
2 it shows where the government comes from.

3 Despite repeated questions trying to get him to say that
4 he was communicating with Mr. Xu and others because he was
5 afraid for his father's safety, do you remember those
6 questions? And you remember each time, Mr. Li said no. No.
7 He's not afraid. He wasn't threatened. This is the stuff of
8 spy novels, ladies and gentlemen. It's not real life.

9 Then we have star witness number three, Mr. David Zheng,
10 the most important of the government's cooperators, as they
11 call them. Mr. Zheng was a large part of the government's
12 case because almost all this case, as I said before, really
13 gets back to GE, and he was the GE engineer.

14 Let's talk about, very quickly, because we've gone over
15 these WeChats, et cetera, pretty much, but let's talk pretty
16 quickly about what we learned at least about David Zheng and
17 his interactions with Qu Hui, Chen Feng, Mr. Xu, or whoever,
18 before Special Agent Hull took over his identity.

19 He was invited to NUAA in March of 2017. He was clear in
20 his communications that he could not and would not discuss or
21 reveal trade secrets. That was a point that he made on
22 several occasions, and he was very clear about it.

23 It was understood from that point forward that only
24 Mr. Zheng was in a position to identify what was trade secret
25 protected information at GE and what was not.

1 And that makes perfect sense, doesn't it, folks, because
2 if you know what a trade secret is, then it's not really a
3 secret, right, especially when it comes to the really exotic
4 and accomplished technology that Mr. Mangan described with
5 respect to GE.

6 Here's a bit of irony for you too. Mr. Zheng honored
7 that commitment to GE. He did not reveal trade secret
8 information, and they fired him anyway.

9 So on March of 2017, the first email from Chen Feng goes
10 out, and he says clearly -- and this goes out to Mr. Zheng,
11 "There is no restriction on the format of the exchange."

12 Mr. Zheng replies back and asks about the format again.
13 Chen Feng responds, "Our formats of exchange are diversified.
14 They can be adjusted according to your availability." He then
15 follows up a couple of weeks later asking about Mr. Zheng --
16 and this is very important. He says, "Can you send me your
17 preliminary thinking regarding the exchange you will be
18 doing." This isn't an ask. This isn't a directive
19 suggestion. This is "it's up to you, bud," right?

20 Zheng responds, "I don't know about the format --" he's
21 stuck on the format. He says, "Please provide some general
22 information." So he's basically asking Feng, Chen Feng, help
23 me out. What do you want?

24 Chen Feng replies, "Regarding the content of the
25 exchanges, the university would like to have you propose two

1 or three of your specialized research topics."

2 Chen Feng then replies, almost the same day, and says,
3 "By the way, there's no restrictions on the format." Time
4 goes by. Finally, Chen Feng sends Mr. Zheng an email and
5 says -- makes some suggestive topics, and he says, "But you
6 can also propose contents that you would like to do in this
7 exchange in which you have expertise."

8 Zheng likes Chen Feng's topics, but he gives the warning
9 we've read over and over again, "I'm required to sign a
10 technical agreement with the company that I work for here.
11 Therefore, a lot of the work that I have conducted at the
12 company could not be shared," blah, blah, blah. And how does
13 Chen Feng respond? Basically, "Fine. No problem. We respect
14 that." You remember that, right?

15 So what happens now? That was May 21st of 2017. What
16 happens now is Mr. Zheng is working hard on his presentation,
17 which is going to happen the first or second day of April --
18 of June, pardon me.

19 Unbeknownst to him, Mr. Ritter and the folks at GE
20 Aviation are working hard trying to determine whether or not
21 Zheng gave anything up in his PowerPoint presentation, and
22 they find out that he didn't.

23 The important thing is during this time, which is, I
24 think, by my math -- well, anyway, it was some time, so -- let
25 me back up for a minute.

1 So at this point, we're in May of 2017. We've got no
2 evidence of any intent, any ask, any intent to steal trade
3 secrets, and neither Chen Feng, Qu Hui, Xu, or anybody
4 followed up with David Zheng for five months. Five months.

5 David Zheng gets his non-prosecution agreement deal.
6 GE figures out that Zheng didn't give up any trade secrets,
7 and Special Agent Hull has to decide on what he calls an
8 operational pivot, which is jargon for, uh-oh, we better find
9 a new target, and they focus on Mr. Xu.

10 Also during that time, GE got Zheng's computer. They
11 analyzed it. They turned over the results to the FBI. Of
12 course, there was the interview of Mr. Zheng.

13 By the way, I want to remind you of the circumstances of
14 that interview, okay? It was done at GE. He was called in to
15 the big conference room. That interview was audiotaped and
16 videoed.

17 The agents weren't there when Mr. Ritter from GE Aviation
18 and his colleague met with Mr. Zheng. Instead, they were in a
19 different room listening to the audio and perhaps watching the
20 video, right?

21 Seven hours that interview lasted. He had no phone, no
22 car; eventually, some food. And he had to call his wife, but
23 he couldn't tell her why -- he had to speak in English. He
24 had to speak on the speakerphone. He couldn't tell her why he
25 was calling her or what was going on. Turns out she knew

1 about the search, and he was questioned about that as well.

2 Do you think that that's treating a person well?

3 So then Special Agent Hull assumes Zheng's identity. He
4 makes up a fib to Qu Hui and says he wants to come to China to
5 give another exchange. He refuses to accept that these guys
6 won't specify the requirements for a presentation.

7 So what he does is he offers full access to General
8 Electric materials. He sends increasingly specific and
9 enticing emails, at one point sending even the Exhibit
10 Number 68 that Mr. Mangan showed you which, to the uneducated,
11 looks like the design for the Gen GE9X engine, which is the
12 latest and greatest, as we've all heard. But neither Mr. Xu,
13 or Qu Hui, or whoever, takes the bait.

14 But I think it's important to stop here and think about
15 that because, by all accounts, right now on this day, which is
16 February 3rd of 2018, Agent Hull, without being asked, has now
17 shared what is represented to be GE proprietary and trade
18 secret information.

19 That, of course, prompts questions coming back from
20 Mr. Xu, somewhat technical questions, questions that prompt
21 Mr. Hull, Agent Hull as David Zheng, to respond. And he says,
22 "I'm familiar with most of the topics you mentioned --" the
23 questions prompted by Exhibit 68, right?

24 And he says, "Regarding the answers to these questions,
25 some topics are more sensitive than others because the

1 involvement of GE intellectual property and commercial
2 secrets, such as the previous email I sent to you --"
3 Exhibit 68, right? -- "regarding the topics mentioned in the
4 email attachment you sent," blah, blah, blah. In other words,
5 uh-oh, this is trade secret. I can't divulge. I can't answer
6 these questions.

7 It's a bit of a head fake, right?

8 The important thing that I want to stress is, you know,
9 Mr. Mangan says that my client, Mr. Xu, is charging ahead,
10 charging ahead, charging ahead. Whoa. Who's charging ahead?

11 Then we get around to it's still not clear who actually
12 suggested or mentioned for the first time this computer
13 directory, but I want to be very clear that the computer
14 directory is just that, the directory, and we're not talking
15 at this point yet about the contents that the titles of the
16 items in the directory are supposed to represent, right? You
17 guys remember all that.

18 And you remember that Special Agent Hull testified that
19 Mr. Ritter made up the directory. Mr. Ritter denied that, but
20 one thing we know is it wasn't Mr. Zheng's original directory.
21 We don't know, or at least we didn't hear what happened to
22 that.

23 So the thing reaches a bit of a standstill. And what
24 happens? Well, the FBI decides that we got to lure our man to
25 Belgium, and we got to go get our man, right?

1 So they do whatever paperwork needs to be done here in
2 this courthouse, and they do whatever paperwork needs to be
3 done in the Kingdom of Belgium.

4 Mr. Hull, as David Zheng, lies about a trip to France.
5 He lies about being able to get away for the weekend. He lies
6 about logistics and travels so that he can lure my client to
7 Belgium, which, by the way, is a friendly extradition state,
8 and they arrest him.

9 Now, folks, in criminal cases, motive is always
10 important. The defendant's motive, but other motives as well.
11 The investigator's motives.

12 I'll call your attention to the jury instruction that
13 Judge Black gave you about testimony by law enforcement
14 personnel, right? At a minimum, to put it mildly, you're to
15 look into that testimony a little more deeply, a little more
16 carefully.

17 What we have here is a tight collaboration between
18 General Electric and the FBI. Now, Mr. Ritter, of course,
19 denied that. He's the cyber security vice president who
20 appears to have suffered amnesia from a head injury between
21 his direct testimony and his cross-examination, if you know
22 what I mean.

23 His memory was sharp as a tack for Ms. Glatfelter. When
24 I got up here to cross-examine him, he could hardly remember
25 his name, couldn't remember 11 meetings or contacts --

1 11 documented meetings or contacts in a 7-month time with
2 Special Agent Hull and others.

3 What does that tell you?

4 He denied fabricating the Zheng made-up computer, despite
5 the fact that Special Agent Hull told us that he's the one
6 that put it together.

7 You know, the people we did not hear from General
8 Electric are the engineers who spent days poring over
9 Mr. Zheng's PowerPoint presentation to honestly conclude that
10 trade secret information had not been revealed.

11 You know, the witness, James Mulvenon -- I'm going to
12 pronounce it the best I can -- helps us with this. You know,
13 he talked about the incentives that companies like GE have to
14 keep China from advancing so they stay on top of that market.

15 He talked about continuing to sell products, announced
16 aircraft engines in China. He talked about continuing to
17 manufacture cheaply. And here we see General Electric
18 continuing to exploit China. Exploit and -- maybe that's not
19 the right word -- exist there, but in a very precarious state.

20 First of all, they've got joint ventures with AVIC and
21 others in China, right? Look at the slide there. We added a
22 little something to Mr. Mulvenon's slide.

23 They want cheap, educated labor. They want to get into
24 China's market. They want to take advantage of China's lax
25 environmental laws, but they don't want to share the

1 technology. And that's where the tenuous rub is, right?

2 That's good.

3 So let's talk about some of the government's
4 misdirections. In their opening statement, at least, they led
5 you to believe that his job at MSS was to engage professionals
6 and to steal aviation -- knowingly and intentionally steal
7 aviation technology secrets. That hasn't worked out.

8 What this is, really, is nothing more than guilt by
9 association. And if you're part of MSS, this mysterious scary
10 organization that's filled with spies, you must be an evil spy
11 that steals aviation trade secrets and goes beyond your job
12 responsibilities.

13 The government, ladies and gentlemen, is playing on your
14 patriotism. They're playing to your fears. They're hoping
15 that you'll punish Mr. Xu and overlook their burden of proof,
16 but you have to be objective because you swore an oath to do
17 that.

18 You know, thinking back on Mr. Mulvenon's testimony for a
19 minute, his testimony confirms that open source collection
20 about science and technology and through other legal means is
21 part -- including personal and professional exchanges is part
22 of MSS's mission.

23 Now, not a single other government witness had any
24 knowledge regarding at least the Sixth Bureau of MSS, which is
25 where Mr. Xu allegedly worked. But it didn't surprise

1 Mr. Mulvenon if the Sixth Bureau engaged in open source
2 collection analysis.

3 Also, Mr. Mulvenon testified that the MSS focuses -- oh,
4 I'm sorry, functions a lot like the CIA and the FBI, in that
5 they have both international responsibilities and domestic
6 security responsibilities. And that's very important,
7 especially when it comes to some of these wild-eyed
8 allegations about hacking and computer intrusions because, you
9 see, the Safran and these Eighth apply techniques references,
10 if they're references to computer intrusions at all, are
11 obviously instances where Mr. Xu and the MSS are handling
12 matters of state security, internal state security. It's part
13 of their name, the Ministry of State Security.

14 The only evidence that we've seen, testimony anyway that
15 we've heard, is from Mr. Hascoet, the engineer from Safran,
16 who, you'll recall, works for a Chinese subsidiary in China,
17 comes and goes between France and China, okay?

18 Now, China is a surveillance state. Mr. Mulvenon agreed
19 with that. I think that, to the extent he was able,
20 Mr. Olson did. Special Agent Adams agreed that these kind of
21 computer intrusions or hacks could be used to track
22 individuals and maintain state security.

23 We have not seen any evidence that trade secrets were
24 targeted, and we haven't received any information that such
25 things were exported or obtained through these computer

1 intrusions, despite that promise being made during the
2 government's opening statement.

3 Quickly I want to go over the testimony of Special Agent
4 Adam James because it was pretty useful and it's right on
5 point here, right?

6 He conducted the forensic analysis of Mr. Hascoet's
7 computer, the Safran engineer. He said he was unable to tell
8 whether any information was targeted. Didn't look like any
9 information was extracted, even though MSS had access to this
10 fellow's computer-ness, I guess, for a month, right.

11 He acknowledged also, as I said before, that malware
12 could be used to surveil and monitor someone who travels to
13 and from work in China.

14 Also, remember Mr. Hascoet's job did not include anything
15 close to designing aircraft engine stuff. He was supervising
16 the manufacturing process, and he talked about when parts come
17 in, I think from Taiwan, for assembly, he makes sure that
18 everything's running well.

19 Mr. Zheng was asked repeatedly about his computer.
20 Wasn't it hacked? This was something that Mr. Mangan was
21 going to get to in a minute, the individual hacks, and I don't
22 remember whether he did or didn't, but the government would
23 not let it go. They asked him like three times was your
24 computer in exactly the same place, you know, did it not work
25 or whatever. There was no hack of David Zheng's computer,

1 okay?

2 Ditto for Arthur Gao. Arthur Gao was asked that question
3 repeatedly also, and all he could say was I never even brought
4 my company computer to China when I came. So there's just
5 Mr. Hascoet, and his testimony doesn't add anything. Bottom
6 line, big, fat red herring. Distraction.

7 Speaking of distractions, I talked about this earlier.
8 We are not talking about export administration regulated
9 material. We're not talking about military material. We're
10 not talking about classified material. Don't get distracted
11 there. Don't get thrown off your game.

12 The government threw some references out, they even put a
13 witness on, I'm trying to remember how to pronounce his name,
14 Mr. Ramakdawala, and that's -- I'll help you with that
15 spelling. And that was all about military technology and EAR
16 stuff, and licensing requirements and stuff. I don't know
17 where we were getting with that.

18 That was a waste of time, until we got to James Olson.
19 Mr. Olson, you'll remember, is a long retired spy, and the
20 government called him, I guess, to demonstrate that everyday
21 occurrences in our life are spycraft.

22 I don't know if you guys remember Jeff Foxworthy. Jeff
23 Foxworthy used to say "you might be a redneck if you got your
24 grandmother's old refrigerator in your front yard," or
25 something like that. So we thought -- I thought immediately

1 of Mr. Olson, the "you might be a spy if you have more than
2 one social media account," because he said that's indicative
3 of spycraft. Or if you have more than one email account,
4 ditto. Or if you have a nickname. Or if you contacted
5 someone through LinkedIn.

6 In the beginning of his testimony, he said that signals
7 spycraft. Or you have two cell phones. You shared a tea or
8 had a meal with someone, downloaded data on to a disk. Stop
9 there because I love that one. It kind of reveals his age,
10 folks, right? When was the last time anybody downloaded data
11 on a disk? And also when Mr. -- when he got out of the -- out
12 from undercover, it was 1997. That may be all we had back
13 then. And finally, if you attended a job-related conference.

14 These are normal, everyday things. I mean, look, if
15 you're willing to go that far, then you can create a little
16 diagram that is designed to convince people that anything's
17 true.

18 Again, Mr. Olson was on the stand, and he deflected your
19 attention. He has no knowledge of the Ministry of State
20 Security, no knowledge of the JSSD, Jiangsu State Security
21 Department. Never worked in China. Hasn't worked in
22 intelligence in over 20 years. Believes he knows what was in
23 the heads of Mr. Xu. You remember that special instruction
24 about -- special instruction about him.

25 It appears that the evidence that he was given -- that

1 whatever he was given to prep, either he didn't read it or it
2 was insufficient because he says he read the emails. But if
3 he did, he didn't understand them because, as we all now know,
4 Mr. Zheng, as of November of 2017, was actually Mr. Hull, who
5 I think you'll agree, when you go back and look at those
6 emails if you need to, became the pursuer.

7 He didn't know anything about MSS's structures. He
8 didn't know what the Sixth Bureau did. He didn't know the
9 functions of MSS. He didn't know that they had a domestic
10 security function. He was unaware it collected open source
11 information. He had only a very basic understanding of MSS
12 and his mission. Frankly, his recruitment cycle that
13 Mr. Mangan showed you briefly is unsupported by the evidence
14 in this case.

15 As I said before, LinkedIn is a legitimate social media
16 platform that's used by millions of people.

17 Dr. Zheng, you'll recall, testified that tea, lunch, and
18 dinner with Mr. Xu as his host is expected and customary in
19 China. If you invite someone to China as your guest, you are
20 responsible for their food and lodging. It's not spycraft.
21 It's culture. It's not spycraft. It's decency.

22 Mr. Zheng testified -- remember Mr. Olson made a big deal
23 about the money. Mr. Zheng testified that the money paid him
24 for travel, for his lecture and his travel, was appropriate.
25 And he said -- and this is important -- that it's now common

1 for people to be paid in U.S. dollars. Olson didn't know
2 these things. Olson's testimony is a wash. Olson's testimony
3 is unreliable.

4 Mulvenon, on the other hand, was helpful. Mr. Mulvenon
5 laid out for us the counterintelligence functions of the MSS.
6 He talked about extensive surveillance in China. He talked
7 about how hacking may also be or is also a technique that's
8 used for security. He agreed that cyber intrusions are a
9 legitimate tool for intrusions. He, like Olson, views China
10 as a surveillance state. China believes in total control of
11 cyberspace within its borders.

12 By the way, as I mentioned before, I think Special Agent
13 James from the cyber section at the FBI office in San Diego
14 agrees with that too.

15 Open source collection and analysis, Mulvenon said, is
16 one of the MSS's three biggest core functions. And he also
17 testified that intelligence is simply the analysis of
18 information to obtain value from that information and to
19 answer questions.

20 This is not the sinister, dirty, sneaky, corrupt project
21 that the government wants you to believe; but, importantly, as
22 Mr. Mangan said in part, at least, there is no secret recipe
23 to this absolutely fantastic technology that General Electric
24 Aviation has developed.

25 As Nick Kray said, even as Mr. Ramakdawala said, this is

1 a building block approach, building block technique that
2 they've used. Lots and lots of trial and error, trial and
3 error. One step forward, two steps backwards; three steps
4 forward, two steps backwards. That's how they developed this.

5 And even Kray was clear. He talked about the coupons and
6 all the different applications. A Chinese spy was not going
7 to go to someone from GE and get the recipe for Coca-Cola, all
8 right? It just doesn't work that way.

9 And if you need to, go back and look at the evidence
10 and -- with this thought in mind: They're interested in the
11 process. They're interested in the stages. None of the
12 so-called key technology that Mr. Kray talked about was asked
13 for, right?

14 And, by the way, I thought his testimony was very helpful
15 to all of us, right? I mean, he educated us all. Seemed like
16 a good guy and a straight shooter. And I think he was
17 particularly straight when I -- as I mentioned before, he saw
18 the questions, remember, that were allegedly on Mr. Xu's phone
19 which he brought to Nanjing -- or, I'm sorry, to Amsterdam,
20 and he said, "Oh, these are good questions," right? "The
21 information behind these questions could get closer to our key
22 technology, and we'd be careful."

23 We're not here to tell you that they weren't trying to
24 get close. I mean, they wanted to learn what they could
25 learn.

1 China was looking for best practices. They were looking
2 for the general approach so that they could advance their own
3 project, which you heard about, on polymetric composite fan
4 blades.

5 Look, they started by asking what amounts to -- for what
6 amounts to David Zheng's universe-- -- Akron University Ph.D.
7 research. Remember that?

8 They weren't looking for the secret sauce, folks. They
9 were looking for directions on how to make the secret sauce,
10 advice.

11 The government has talked a fair amount about the
12 state-owned enterprises. And, you know, particularly, in the
13 very beginning of the case, during the opening statement, they
14 talked about AVIC and COMAC and NUAAs and JAST and all these
15 government entities that are supposedly dirty and corrupt,
16 et cetera.

17 Well, GE has a joint venture with COMAC, right? I mean,
18 they're selling them their engines.

19 NUAA is very well respected. We've heard that. It's an
20 established university with a good reputation.

21 JAST is a large trade association.

22 Mulvenon agrees that it's not uncommon for universities,
23 particularly universities that specialize in aviation, to have
24 relationships with associations like JAST.

25 So let's talk about, again, what the evidence really does

1 show. We're getting close to the net here, I think.

2 THE COURT: I'm not trying to be difficult, but keep
3 your voice up, please.

4 MR. KOHNEN: I'm sorry. I apologize.

5 So we've heard substantial information about China's
6 comprehensive program to collect and analyze publicly
7 available information from overseas.

8 We know from Mr. Mulverson -- Mulvenon, I'll get it right
9 one of these days -- that this is a key function of MSS.

10 We also heard Mulvenon testify about the importance of
11 human intelligence and the importance it plays in collecting
12 evidence; not in a nefarious way, but it helps with the
13 analysis of publicly available information. It gives you
14 up-to-date information, and it provides context. And that's
15 what Mr. Xu was doing.

16 Mulvenon agreed that obtaining guidance for collection
17 from government actors, wherever they come from, is not, in
18 and of itself, illegal.

19 And what about non-public, non-trade secret information?
20 This was something, I think you'll recall, Mr. Mulvenon spent
21 a fair amount of time on. He testified that the collection of
22 non-trade secret information is a growing focus of China's
23 collection efforts. He testified that this includes
24 information that may not be obtained through -- that may be
25 obtained, excuse me, through researchers, expert exchanges,

1 presentations at universities, et cetera.

2 He testified, in essence, that the government may not
3 like these forms of intelligence gathering, but they're not
4 illegal. He testified that multinational companies might not
5 like these forms of technical exchanges, but they're not
6 illegal. He said that he believes this is an area that
7 requires new legislation.

8 What he was saying there, essentially, is that the very
9 statutes under which Mr. Xu has been charged do not apply to
10 the work he was doing. Hard stop. That's what Mr. Mulvenon
11 said.

12 The requirements that U.S. companies -- there are
13 requirements that U.S. companies transfer technology to China,
14 okay, and that's the pay to play that Mulvenon testified about
15 as well.

16 There's nothing illegal about it. And he said that
17 companies agree to these demands because they want access to
18 China's cheap labor. They want China's educated labor. They
19 want lax environmental standards. They want access to the
20 fastest growing market in the world.

21 And then we have China's joint ventures, right? We've
22 got GE, Safran, Boeing, AVIC, COMAC. They all have joint
23 ventures, and they all can be tenuous, but there you see -- on
24 the left side of your screen, you'll see that talent program
25 that I mentioned to you during the opening statement, a joint

1 venture between GE, COMAC, and AVIAGE, which I believe is part
2 of AVIC.

3 You know, China does other things as well. They have
4 pretty much forced multinational companies to have research
5 and development labs in country, and that's Mulvenon's
6 testimony as well.

7 But despite all that, what's happened here is Mr. Xu, my
8 client, has become a pawn, a pawn in the tense place between
9 U.S. industries trying to exploit China and trying to get
10 along with China, right? And, you know, just one guy. He's
11 just one guy, right?

12 So if we're going to send a message to Xi Jinping, if
13 we're going to send a message to MSS, if we're going to send a
14 message to AVIC, to COMAC, to all these evil Communist
15 government-run companies, let's snatch that guy.

16 One of the things that Mr. Mangan talked about was he
17 accused Mr. Xu of not being normal, of not behaving. "This
18 isn't normal behavior." You remember he repeated that three
19 or four times. My question is, normal by whose standards?

20 Speaking of normal, Mr. Gao talked about how the
21 exchanges like we were -- he testified about how the exchanges
22 like he was setting up with Mr. Zheng were perfectly common,
23 that he'd been to several himself.

24 He agreed that expertise is shared and built up over
25 those things, and there's nothing wrong with talking about

1 your experience. Remember he said that your employer doesn't
2 own your experience.

3 (Cell phone ringing.)

4 MR. KOHNEN: Hello?

5 THE COURT: That was unintentional. Seize the phone
6 and proceed.

7 MR. KOHNEN: Thank you, Judge.

8 May I have just a moment, Your Honor?

9 THE COURT: Yes.

10 MR. KOHNEN: One of the things -- kind of a loose end
11 here, forgive me. One of the the things I want to come
12 back -- circle back to is, you know, folks, one of the things
13 that really is going to be an important consideration for you
14 is trying to wrap your brains around who is speaking to whom
15 when, right? And, you know, that's particularly important
16 when you think about these Gmail accounts that the government
17 has worked so hard to tie closely to Mr. Xu, right? And yet,
18 with respect to only one -- even just one of those accounts,
19 it was accessed 55 times after he was arrested and after his
20 phone was put in a bag that blocked signals going out or going
21 in.

22 You know, folks, that puts this case in a whole new
23 category because Mr. Hull and Mr. Mangan and Ms. Glatfelter
24 have gone over email, after WeChat, after QQ. But, really,
25 when you talk about the burden of proof and reasonable doubt,

1 how do you know who's talking to who? This is a big problem
2 for them.

3 I wanted to go over a couple of other things that we
4 mentioned during our opening because I'm pretty proud of the
5 fact that we told you like it was then.

6 We told you about this parallel investigation, this work
7 together between the FBI and GE, and I think you've seen it in
8 real life.

9 We told you about this setup, this frame job, and I think
10 you've seen it now unfold.

11 We told you about the legitimacy of expert exchanges.
12 We've heard testimony on that. We asked for the ask, right?
13 Does everybody understand what I mean by that? Where is the
14 ask for technological proprietary trade secret technological
15 aviation information? We're still asking for that.

16 We told you there would be no evidence that trade secrets
17 surfaced at all. There hasn't. We told you that the evidence
18 was going to reveal that Zheng never revealed trade secrets;
19 and, in fact, worked hard not to, and that's true. And we
20 told you most importantly that the relationship with David
21 Zheng was always premised on the understanding that he could
22 not and would not share trade secrets.

23 Folks, Judge Black, the government, the defense here, we
24 all told you to exercise your common sense. Please use your
25 common sense, and that's really all you need in this case

1 because you can't vote to convict somebody of a crime that's
2 based on weak circumstantial evidence, innuendo, supposition,
3 and uncertainty.

4 You cannot vote to convict somebody who's told at the
5 beginning and consistently thereafter by the likes of David
6 Zheng that he will not share prohibited company trade secret
7 information.

8 You cannot vote to convict someone who justifiably relies
9 on his counterpart to protect the information that he or she
10 has a duty to protect.

11 There's a line somewhere, folks. There's a line between
12 information that companies would like to keep secret that
13 isn't trade secret information as it's defined, and
14 information that they just want to keep secret. I mean -- and
15 trade secret information, right, it's a line. It's somewhere.
16 Where is that line? I don't know.

17 The government's case never identifies where that line is
18 under the facts that they've laid out for you, so it remains a
19 mystery. It's impossible to find that Mr. Xu knowingly
20 crossed that line when we don't know where the line is. It's
21 impossible to find that he intentionally crossed the line when
22 we don't know where the line is.

23 There are a lot of competing principles in this case,
24 ladies and gentlemen, a lot of moving parts, and a lot of
25 unanswered questions. Let me throw out a couple of including,

1 but not limited to, open questions.

2 Who was acting as Chen Feng and when?

3 Who was acting as Qu Hui and when?

4 How much did Mr. Xu really know about all of these
5 electronic communications?

6 Which, if any, of those communications did he actually
7 participate in?

8 If they were really seeking trade secrets, the folks at
9 MSS, how could they believe that David Zheng, the GE engineer,
10 was going to give them up, especially when he said repeatedly
11 that he would not do so, especially when the government's star
12 witness, Arthur Gao, never did so? Especially when star
13 witness, Sun Li, never did so? Are you getting a trend here?
14 They weren't looking for trade secret information.

15 The government has reached too far. They failed to prove
16 their case. Not sure why precisely the FBI and GE are working
17 so hard on this. Perhaps, though, perhaps we've seen an
18 example of how far the feds will go to protect and advance the
19 interest of one of their largest multinational corporations.

20 Sadly, as I mentioned before, there's a man who is caught
21 in the middle, and that's not right. That's not justice. And
22 when you look at this objectively, as you have sworn to do, as
23 you have sworn an oath to do, you will conclude, as you must,
24 that this one man -- full circle, this one man did not attempt
25 to steal trade secrets. He did not conspire to steal trade

1 secrets. He did not do so knowingly, and he did not do so
2 intentionally.

3 Ladies and gentlemen, the government has laid out their
4 claims in the overt acts, and I just want to make sure that
5 you understand that those are just their claims, and they're
6 things that, if done separately, are perfectly legal and, when
7 combined, are perfectly legal as well if the object was not
8 inappropriate.

9 If there was any conspiracy on China's side, it was a
10 conspiracy, a joint effort to obtain information that was free
11 of trade secrets. And if you want to call that kind of joint
12 effort a conspiracy, good for you.

13 You've taken an oath to find the facts based only on the
14 evidence you've heard in this courtroom. You've heard and
15 seen evidence for two weeks now. That's a lot of evidence.
16 But when it comes to evidence, quantity does not equal
17 quality, as I said over two weeks ago.

18 This case, the government's case, is a nearly random
19 bunch of weak circumstantial evidence, a bunch of witnesses,
20 too many witnesses, who offered little or no -- little or
21 nothing toward the government's objective; and, frankly, at
22 times, really only helped our cause, our case.

23 The government's case is not a strong case. It's a weak
24 case, and you must acquit Mr. Xu when you apply the beyond a
25 reasonable doubt standard.

1 Recall your instructions from Judge Black. In my
2 opinion, the most important of those instructions is the proof
3 beyond a reasonable doubt instruction at page 3 in your
4 instructions.

5 Mr. Xu is presumed innocent, not guilty. In order to
6 convict him, the government must overcome this strong
7 presumption. They have not. They had to prove his guilt to
8 each of you beyond a reasonable doubt; not beyond all doubt,
9 but pretty close. They failed.

10 We, conversely, didn't need to prove anything. We didn't
11 have to put on any evidence, and we chose not to because the
12 government failed to meet their burden.

13 Remember, in order to convict, you have to find guilt
14 beyond a reasonable doubt. So if you have any reasonable
15 doubt about any of the elements which the government was
16 required to prove, then you must do your duty, you must do the
17 right thing, and you must vote not guilty. And you should do
18 it on each of the four counts which the government, not the
19 Court, has alleged against Mr. Xu.

20 There simply has not been enough reliable quality
21 evidence presented in this case, not enough for you to do
22 anything other than vote to acquit, vote not guilty.

23 Think, please, about Judge Black's admonitions. The only
24 way you could vote to convict would be if you would base one
25 of the most -- I'm sorry, the most important decision in your

1 life on the evidence that the government has presented here.

2 And don't forget the evidence that came out during
3 cross-examination. You know, when the government takes on a
4 knowingly case, when the government takes on an intentionally
5 case -- that's what we sort of call them as criminal
6 lawyers -- they must, as I said in my opening statement, I
7 hope you'll recall, take you inside the defendant's head,
8 inside the head of a man who lives literally one-half way
9 around the world, who grew up and lives in a culture that we
10 barely understand.

11 The government has failed to place you in his head. They
12 have failed to show you that Mr. Xu crossed the line that I
13 mentioned earlier.

14 Folks, this is a man from China. If we, as a nation, are
15 going to lure someone from a country halfway around the world
16 to a third country, a friendly country, where we snatch him
17 and we jail him, we need better facts than these. We need
18 better evidence than this.

19 Our Constitution now grants him rights, as well it
20 should. So our Constitution now guarantees that in order to
21 find -- that the government has to prove Mr. Xu guilty beyond
22 a reasonable doubt before this case goes any further. The
23 government has failed on all four counts to meet its burden of
24 proof.

25 You must, each and every one of you, each and every one

1 of you, follow your oath, examine the evidence, do your duty,
2 and find Mr. Xu not guilty of Counts 1 through 4.

3 Thank you for your attention.

4 Your Honor, that concludes my remarks.

5 THE COURT: Very well. I'm inclined to take a break,
6 unless there's an objection?

7 MR. MANGAN: No, Your Honor.

8 THE COURT: You've been listening carefully. You've
9 been focused, as you have since day one. I'm not quite done.
10 The government gets the last word.

11 We're going to break for 15 minutes, get you back in the
12 courtroom at 4:00. The government will make its final closing
13 remarks, and then I'm going to send you to the jury room
14 briefly.

15 Out of respect for you, we'll rise as you leave for
16 15 minutes.

17 (Jury out at 3:46 p.m.)

18 THE COURT: The jury's left the room. We're going to
19 break for 15 minutes. Come back on the record at 4:00.

20 (Brief recess.)

21 THE COURT: It's two minutes to 4:00. We're outside
22 the presence of the jury.

23 Are we ready for the jury for a rebuttal closing argument
24 from the government's perspective?

25 MR. MANGAN: Yes, Your Honor.

1 THE COURT: And the defense?

2 MR. KOHNEN: Yes, Your Honor.

3 THE COURT: Let's call for the jury.

4 (Jury in at 4:05 p.m.)

5 THE COURT: All members of the jury have joined us
6 after the break. Thank you for your continuing attention.

7 We're going to hear the government's rebuttal closing,
8 their last word.

9 Mr. Mangan.

10 MR. MANGAN: Thank you, Your Honor.

11 Thank you, ladies and gentlemen. I appreciate your
12 attention, and I will try to be brief.

13 So there were quite a number of things in there. I won't
14 address every single one. Obviously, you need to determine
15 what evidence you saw and what evidence you heard and whether
16 that convinces you beyond a reasonable doubt.

17 But keep in mind it's based on the evidence in here, not
18 wishful thinking, not what they wish had happened in this
19 trial. It's based on the actual evidence that is right there
20 in the defendant's own writings.

21 Some of what you heard, I think, was more of an alternate
22 reality, divorced from the evidence that you heard.

23 I do want to talk a little bit about he brought up a
24 point regarding, Hey, somebody's tried to get into the email
25 accounts after he was arrested. Well, bear in mind, he works

1 for the MSS. Let's keep that in mind. After he was arrested,
2 the fact that there may have been IP hits going into his email
3 account are not terribly unusual, and there were other
4 explanations for that. But, again, that was just on the email
5 accounts. It doesn't go back to everything else you heard
6 about the attribution that takes all of the evidence right
7 back to this defendant, okay?

8 When they went and talked about, well, you know, who is
9 Qu Hui, who is the person behind the keyboard, that's what we
10 tried to show you time and time again, that it was him.

11 The text messages are from his phone number. He was
12 carrying that phone in Belgium. It's the same phone number he
13 puts on the business card for his alias.

14 When we talk about the voice recordings, Arthur Gao was
15 there. He listened to the recordings. Jason Wang, the
16 linguist, listened to those recordings. They also had
17 listened to the defendant. They said that's him, all right?

18 When they talked with Qu Hui about, "Hey, can we meet,"
19 and they set up a meeting in Belgium, who shows up is Qu Hui,
20 the defendant. When David Zheng met him in China, got the
21 business card and came into court and pointed him out and said
22 that's him, there is no mystery to this. They are just trying
23 to grab at whatever they can. It's desperation.

24 Now, one other thing I'd want to hit on. I know they
25 mentioned -- they didn't talk a lot about it, but we talked

1 some about this hacking and the things that happened at
2 Safran, what happened with the Eighth Division. And they
3 said, well, you know, he's part of state security. Maybe it
4 was state security.

5 Well, did you hear any evidence that that was part of
6 some state security operation? Remember in the evidence, he
7 said he deals with overseas science and technology. His job
8 is dealing in aviation; and, lo and behold, the people that
9 were hacked worked for aviation companies.

10 And they weren't Chinese citizens. These were
11 individuals from other countries for the exchanges. They were
12 invited there for these exchanges, and then they went and
13 ripped off their computers while they were in a hotel room,
14 all right?

15 And, frankly, it doesn't matter what name they want to
16 put on it. If it meets the elements of the crime, it's the
17 crime. They can call it whatever excuse they can, but the
18 fact is, if you look at that evidence, whether it's the Eighth
19 Division applying techniques, or them trying to get people
20 like Sun Li to be a new asset, or it's frankly very clear the
21 Safran hacking, in all circumstances, if you look at that
22 evidence and understand, yes, this was a conspiracy with an
23 attempt to obtain aviation trade secrets, then he is guilty.
24 Period. End of story.

25 The one other thing I want to mention, I know there was

1 a -- you've heard the instructions this morning. You'll have
2 a chance to go back and look at them.

3 There was a lot of talk about what was being targeted. I
4 want to be clear once again that you heard in the instructions
5 that this is not -- you know, impossibility is not a defense.

6 It says in here the government must only prove that the
7 conspiracy intended to target information that the
8 conspirators believed to be trade secrets. Whether or not the
9 targeted information actually was a trade secret is
10 irrelevant, all right?

11 So when we go back to the facts and the evidence that was
12 before you with GE, there's an awful lot in there for you to
13 look at and to conclude that that, in fact, was his intent.

14 And what was interesting is Mr. Kohnen talked time and
15 time again about this person was a star witness, and this
16 person was a star witness. If there was a star in this case,
17 and that's not kind of how we phrase things, but in the
18 evidence, the star is Xu Yanjun. It's his words through
19 almost every piece of evidence in there. He is the speaker.
20 He is the one talking to you and telling you what his intent
21 is. So he is the star. And you need to look at what he said
22 and how that is a window into his intent.

23 So much of what you just heard in the response talked
24 about other people, other people, other people, and they
25 didn't want to touch on what Xu Yanjun said because it's

1 incriminating, because it's -- they're admissions. It shows
2 his guilt time and time again.

3 He gives away his intent with his words. You saw it over
4 and over again in the Gao recording, when he talks about
5 trying to obtain stuff that's secret at these companies, in
6 the GE incident, over and over again.

7 They skipped over most of what happened in 2018 in the
8 GE. Think about that. Most of what we are trying to present
9 to you involved what this defendant said and solicited and
10 demanded of the GE employee through 2018, and they didn't
11 touch it. They didn't want to talk about it because there's
12 not much to say.

13 When he goes to him and says go ahead and collect, I
14 want domes- -- you know, we want this stuff regarding the
15 system requirements, then he gives some more detail on it,
16 then he finally sends the list with the domestic requirements.

17 And, by the way, that was -- there was a lot of talk
18 about Mr. Kray saying this stuff gets to GE information. It
19 was the domestic requirements list that he looked at, where it
20 goes through in grave detail about the various measurements
21 and things of that nature, where he says yes, the answers to
22 this are getting at our trade secrets.

23 Those were the lists from Xu Yanjun, from his own words
24 that he gave to the defendant, and he doubled down and he
25 asked for the directory. When he got the directory, he

1 doubled down and asked, "Hey, can you bring it?" Then he said
2 once again, "Don't just bring it. Can you export it? Can you
3 download it on to a hard drive?"

4 He showed you his intent time and time again. And then
5 he traveled thousands and thousands of miles into Belgium with
6 all the cash and everything else, and the phones and the
7 pictures, and the questions and the hard drives because he
8 wanted to get that computer, and he surely intended to obtain
9 those trade secrets at that point.

10 Again, we ask you to use your common sense when looking
11 at the evidence in this case. Above all, use your common
12 sense, look at the circumstances and look very carefully at
13 the defendant's words because, as we said before, what he
14 hides with his aliases, what he hides with his lies, shows you
15 his intent, but then also what he says shows you his intent.

16 You saw it from the Gao recordings through all of the
17 GE materials and the way he talked privately with his
18 coconspirators.

19 If you want one more thing, look at the recording when he
20 was speaking with his tutor. These are his own words. This
21 is his recording, his voice that was identified by witnesses,
22 "The leadership asked you to get the materials of a U.S. F-22
23 fighter aircraft. You can't get it by sitting at home."
24 He's telling you what his job is. He's telling you what he
25 does for a living. And when his friend says, "You also have

1 to flip someone. Travel outside China and take the risk."
2 Couldn't have predicted any better. That's exactly what he
3 tried to do here with GE.

4 I know they want to blame the victim, blame GE. GE's
5 just trying to sell engines without getting ripped off, but he
6 was the one targeting GE. He's the one targeting this GE
7 composites engineer. He tried to flip them. He thought he
8 was going to flip them, and he took the risk, and this is
9 where the consequences are.

10 Nothing further, Your Honor.

11 THE COURT: Very well.

12 Ladies and gentlemen of the jury, momentarily, it's
13 time to begin your deliberations. I recognize that it's about
14 4:15. The first thing I need to do before we send you
15 upstairs is do something I've never enjoyed doing.

16 I've been a judge for more than 25 years. I told you up
17 front that we picked three alternates because this trial was
18 scheduled to go on for a long period of time, and we were
19 concerned, as we are in all cases, that we could lose some
20 jurors over that time period. We have not lost any jurors.
21 We need to reduce this jury to 12 people, so I need to excuse
22 the three alternates.

23 In excusing you, I want you to understand, number one,
24 you remain on jury duty. Don't go to work. If one of the
25 12 jurors is unavailable, we're going to pick up the phone and

1 call an alternate to scurry down. So make yourself available
2 by phone that Ms. Webster has, and if we need you, we'll call
3 you.

4 But until the verdict is reached by the original 12,
5 you're not to discuss the case with anyone. That admonition
6 stands because if you go home and talk about it now, and then
7 we call you back, you've had a conversation outside the
8 presence of the Court that you would bring to the jury
9 deliberations, which would be inappropriate.

10 So as difficult as it is, continue not to discuss the
11 case with anyone. No independent research. We'll call you
12 when a verdict has been reached. At that point, you're free
13 to discuss the case with anyone. You are also free to choose
14 not to discuss the case with anyone.

15 So I'm going to excuse the three alternates now with my
16 sincere thanks on behalf of the Court and the community for
17 your continuing service, for your having sat here through and
18 listening to every word, and now being asked to go home and
19 not discuss it until the verdict is reached in the event we
20 need to call you.

21 The three alternates are Jurors 15, 14, and 13. I'm
22 going to come down and greet you on behalf of the Court and
23 community, the work you have done and are continuing to do.

24 If 15, 14, and 13 would stand and prepare to leave the
25 room. If you'll lead them around, I want to bump your elbow.

1 This is on behalf of the Court and community. Do you bump?

2 Thank you.

3 Thank you.

4 Thank you.

5 You're free to go.

6 To the 12 of you in the jury box, you are the jury. You
7 are to decide this case. You are to follow the instructions.

8 Momentarily, I'm going to send you up to the jury room.
9 As I indicated in the instructions, the first thing you should
10 do is pick a foreperson. That person has no extra power and
11 no better vote.

12 That person is merely designed to make sure that all 12
13 of you get to express your opinions whenever you want and to
14 speak for you to the Court if you need to speak to the Court.

15 After you pick a foreperson, you can decide among
16 yourselves how long you want to stay today, or whether you
17 want to adjourn at the normal time or shortly thereafter, go
18 home, get refreshed, and come back tomorrow at 9:15 for us to
19 get you back on the job at 9:30.

20 You're welcome to take as much time or as many days as
21 you choose.

22 When you come back tomorrow, if that's how it works out,
23 you're to go to the jury room at 9:15 but not discuss the
24 case. At 9:30, I will call for you to come back to the
25 courtroom. I'll count noses. I'll send you right back

1 upstairs and you begin your deliberations.

2 I just don't want deliberations to start before all
3 12 have gathered and before you have seen me.

4 We'll send upstairs today your jury instruction packets
5 and one verdict form. The verdict form has my initials on it
6 so I know it's the one, your jury instructions. Some of you
7 took notes. You'll have to figure out among yourselves which
8 packet is yours and which is not. We will also send up the
9 exhibits.

10 Today after you've gone upstairs and you've selected a
11 foreperson and you've decided how much you want to stay today,
12 buzz for us. I'll send someone up. I'll get your directions
13 whether you want to leave at the time of the buzzer, or
14 whether you want to stay later tonight, or whether you want to
15 come back tomorrow and start fresh in the jury room by 9:15.
16 No discussions. Back to the courtroom at 9:30. Then right
17 back upstairs and you continue your deliberations.

18 So here you are. You're about to exercise the sacrifice
19 required by democracy. We don't live in a country where a
20 king decides guilt or innocence. We live in a country where
21 12 ordinary citizens come down, listen to the evidence, and
22 collectively reach a decision.

23 It's on your shoulders. It's an enormous responsibility,
24 but it's a sacrifice required by democracy. And I've watched
25 you, and I have enormous faith in your abilities.

1 Out of respect for you, we'll rise as you go to the jury
2 room. Pick a foreperson, buzz us when you know what you want
3 to do for the balance of the day.

4 If you'd rise as the jury leaves.

5 (Jury out at 4:22 p.m.)

6 THE COURT: The jury has left the courtroom. The
7 door is closing.

8 You've heard my instructions to the jury. I anticipate
9 hearing from them soon, and we will advise you and them as to
10 where we are.

11 Court's in recess until we hear from the jury.

12 (Brief recess.)

13 THE COURT: Thank you. Please be seated.

14 Back in the courtroom on the record. The jury is
15 upstairs. It's a few minutes after 4:30.

16 The defense team is here with the defendant and
17 interpreters.

18 The government team is here.

19 I'm advised that the jury has selected a foreperson and
20 wishes to go home for the day, go home and start fresh.

21 I intend to call them down here, admonish them, as is
22 traditionally done, and release them for the day.

23 Is there anything for me before we call the jurors down
24 from the government?

25 MR. MANGAN: No, Your Honor.

1 THE COURT: From the defense?

2 MR. KOHNEN: No, Your Honor, except to ask who -- do
3 you expect any of us here tomorrow morning at 9:30?

4 THE COURT: Yes. I'm going to bring the jury to the
5 room every morning at 9:30. I think it would be helpful if
6 you were -- if somebody on behalf of both sides were present.

7 Do you wish to have your client present?

8 MR. KOHNEN: May I consult with him for a moment?

9 THE COURT: Yes.

10 (Mr. Kohnen confers with the defendant.)

11 MR. KOHNEN: Your Honor, I think they're probably
12 going to bring him down here daily anyway, so the answer is
13 yes.

14 THE COURT: Very well. So the marshall is advised
15 that we'll need the defendant tomorrow in the courtroom at
16 9:15, ready for the jury at 9:30, which will get sent back to
17 the jury room at about 9:32.

18 Is there anything further from the defense before we get
19 the jury?

20 MR. KOHNEN: No. Thank you, Judge.

21 THE COURT: The government?

22 MR. MANGAN: No, Your Honor.

23 THE COURT: Please call for the jury.

24 (Jury in at 4:38 p.m.)

25 THE COURT: You may all be seated. Thank you.

1 All 12 jurors have returned to the courtroom. I'm
2 advised that you have selected a foreperson and that you wish
3 to leave for the day -- it's after 4:30 -- come back tomorrow
4 morning to pick up with deliberations. And that makes eminent
5 good sense.

6 I brought you down here one more time to give you the
7 standard admonitions. This is really important. Do not
8 discuss the case during the break with anyone, including among
9 a couple of yourselves.

10 We're done talking about the case, you are, until we
11 bring you back to the courthouse. You'll go to the jury room
12 by 9:15. I'll call for you at 9:30. I'll count 12 and send
13 you back up to begin your deliberations.

14 Don't talk about the case until I've seen you and sent
15 you back upstairs.

16 On behalf of the Court and the community one more time,
17 thank you for your hard work and your service.

18 Do not discuss the case with anyone, including among
19 yourselves. Do not discuss the case tomorrow until you've
20 come to the courtroom and I've sent you upstairs. No
21 independent research.

22 Thank you. You're free to go for the day. We'll rise
23 for you as you leave for the day.

24 (Jury out at 4:40 p.m.)

25 THE COURT: The jury has left for the day. The door

1 has closed.

2 Are we ready to adjourn for the day, or is there anything
3 else you want to address at this time from the government?

4 MR. MANGAN: No, Your Honor.

5 THE COURT: You'll be here tomorrow morning?

6 MR. MANGAN: Yes. We will be here.

7 THE COURT: Defense, anything further for today?

8 MR. KOHNEN: Ditto, Judge Black. Thank you.

9 THE COURT: All right. We'll see you tomorrow.
10 We're in recess.

11 (Proceedings adjourned at 4:40 p.m.)

12 * * *

13 C E R T I F I C A T E

14 - - -

15 I, M. SUE LOPREATO, RMR, CRR, certify that the foregoing
16 is a correct transcript from the record of proceedings in the
17 above-entitled matter.

18 /s/ M. Sue Lopreato
19 M. SUE LOPREATO, RMR, CRR
Official Court Reporter

February 1, 2022

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